TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~396~~ 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, PETITIONER,

vs.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 21, 1966
CERTIORARI GRANTED FEBRUARY 13, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 892

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, PETITIONER,

vs.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., MARCH 24, 1967

[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, Appellant.

Appeal from Order of the United States District Court for the Eastern District of Pennsylvania, Granting Injunctive Relief.

Appellant's Appendix—Filed October 11, 1965

Abraham E. Freedman, Martin J. Vigderman, Freedman, Borowsky and Lorry, 1415 Walnut Street, Philadelphia, Pennsylvania 19102, Attorneys for Appellant.

[File endorsement omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RELEVANT DOCKET ENTRIES

August 2, 1965	Complaint filed
August 2, 1965	Summons exit
August 2, 1965	Order fixing hearing on Aug. 3, 1965, at 11:00 A.M. to show cause why defendant has not complied with Arbitrator's Award, filed.
August 3, 1965	Hearing sur order to show cause—hearing continued
August 3, 1965	Hearing re motion to dismiss—argued—motion denied
August 5, 1965	Transcript of August 3, 1965, filed.
August 12, 1965	Summons returned: "on 8-2-65 served" and filed.
September 13, 1965	Hearing re arbitrator's award—continued to 9/14/65 at 2 P.M.
September 15, 1965	Further hearing re arbitrator's award Witness sworn (Order signed)
September 15, 1965	Order of Court that the defendant comply with the Arbitrator's Award issued on June 11, 1965, filed. 9-16-65 entered & notice mailed
September 16, 1965	Transcript of Sept. 13, 1965, filed.
September 16, 1965	Transcript of Sept. 15, 1965, filed.
September 16, 1965	Notice of appeal by defendant, filed. Copy to Kelly, Deasey & Scanlan, Esqs.
September 16, 1965	Copy of Clerk's notice to U.S. Court of Appeals, filed.

September 16, 1965	Defendant's motion to dismiss complaint, filed with the Court Aug. 3, 1965.
September 16, 1965	Memorandum in support of defendant's motion to dismiss, filed with the Court Aug. 12, 1965.
September 16, 1965	Defendant's statement of the case, filed with the Court Aug. 3, 1965.

[fol. 2]

September 16, 1965	Memorandum contra defendant's motion to dismiss, filed with the Court Aug. 20, 1965.
September 16, 1965	Brief in support of complaint for specific enforcement of an arbitrator's award, filed with the Court Aug. 3, 1965.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pa., Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291, Pier 4, South Wharves, Philadelphia, Pa., Defendant.

COMPLAINT—Filed August 2, 1965

1. This action arises under the Labor Management Relations Act of 1947, 61 Stat. 136 Section 301; U.S.C. Title 29, Section 185.

2. Plaintiff, Philadelphia Marine Trade Association (hereinafter referred to as "P.M.T.A.") is a non-profit corporation, organized and existing under the laws of the State of Delaware, with principal office and place of business in the Bourse Building, 5th and Market Streets, Philadelphia, Pennsylvania, which has for its membership steamship lines, steamship agents, stevedoring companies and companies rendering services allied to stevedoring, tugboat and barge companies, marine terminal operators, warehouses, and companies rendering other services in and to the marine industry in and about the Port of Philadelphia, Pennsylvania.

[fol. 4] 3. International Longshoremen's Association, Local 1291 (hereinafter referred to as the "Union") is a chartered local of the International Longshoremen's Association (AFL-CIO) having its local office and place of business at Pier 4, South Wharves, Philadelphia, Pennsylvania.

4. The P.M.T.A. and the Union are parties to a Collective Bargaining Agreement dated February 11, 1965, a copy of which is attached hereto, made a part hereof and marked Exhibit "A".

5. The aforesaid Collective Bargaining Agreement incorporates certain provisions of a previous Collective Bargaining Agreement between the P.M.T.A. and the Union which expired on September 30, 1964. A copy of the previous Collective Bargaining Agreement is attached hereto, made a part hereof and marked Exhibit "B".

6. On or about April 26, 1965, a dispute arose between the P.M.T.A. and the Union regarding the provisions of Section 10, subparagraph 6 of the Agreement dated February 11, 1965 and the matter was referred to an arbitrator, Milton M. Weiss, on April 30, 1965 in accordance with the provision of the Agreement dated February 11, 1965 and the previous Collective Bargaining Agreement, more specifically Section 28 of the latter agreement relating to the "Grievance Procedure".

7. The issue before the Arbitrator was whether Section 10, subparagraphs 5 and 6 are to be construed together so that the individual Employer's right to set back a gang of longshoremen from 8:00 A.M. to 1:00 P.M. is conditional [fol. 5] solely upon the non-arrival of a vessel in port, or whether such Employer's right to "set back" a gang of longshoremen from 8:00 A.M. to 1:00 P.M. is without qualification.

8. On June 11, 1965, the Arbitrator, Milton M. Weiss, in his opinion sustained the P.M.T.A.'s position and held that Section 10(6) providing gangs "ordered for an 8:00 A.M. start Monday through Friday can be set back at 7:30 A.M. on the day of work to commence at 1:00 P.M., at which time a four-hour guarantee shall apply. A one-hour guarantee shall apply for the morning period unless employed during the morning period", may be invoked by the Employer without qualification. A copy of the Arbitrator's Award is attached hereto, made a part hereof and marked Exhibit "C".

9. On July 30, 1965, a dispute arose between P.M.T.A. and the Union involving an Employer's (Nacirema Operating Company) right to "set back" in accordance with the provisions of Section 10(6) of the Collective Bargaining Agreement and the Award of the Arbitrator dated June 11, 1965. The Union through its President, Richard L. Askew and four of its Delegates, Messrs. Devine, Smith, Johnson and Talmadge advised the P.M.T.A., through its Executive Secretary, Alfred Corry, that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award.

[fol. 6] 10. As a consequence of the Union's refusal to abide by the terms of the Arbitrator's Award, the Employer (Nacirema Operating Company) was unable to work the steamship "Shaugran" resulting in serious loss and damage to said Employer, the owners and operators of the "Shaugran" and to the Port of Philadelphia.

11. The defendant's refusal to comply with the terms of the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between the P.M.T.A. and the Union.

Wherefore, plaintiff in view of the stated and confirmed intent of the Union to disregard the Arbitrator's Award dated June 11, 1965 relative to Section 10(6) of the current Collective Bargaining Agreement prays that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award, and that plaintiff may have such other and further relief as may be justified.

Respectfully Submitted

Kelly, Deasey & Scanlan, By William R. Deasey, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by Alfred Corry, jurat omitted in printing.*

[fol. 8]

EXHIBIT A TO COMPLAINT

MEMORANDUM OF SETTLEMENT BETWEEN PHILADELPHIA MARINE TRADE ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291

Applicable to the Longshoremen's Agreement which expired September 30, 1964

Effective for the period from October 1, 1964 to September 30, 1968

* * * * * * *

[fol. 12] 10. *Hiring System*

(1) For Tuesday through Saturday, day work, orders must be placed by 4 PM the day before.

(2) For Sunday and Monday, day work, orders must be placed by Saturday at 9 AM.

(3) From Monday through Friday, night work (5, 6 and 7 PM) orders must be placed by 1 PM the same day. Guarantee shall apply until 11 PM.

(4) For Saturday and Sunday, night work, orders must be placed by 9 AM Saturday. Guarantee shall apply until 11 PM.

(5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.

(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period.

[fol. 13] (7) Any new overtime hire for Saturday, Sundays and Holidays, automatically entails four hours guarantee regardless of any conditions.

(8) Any new hire for a day following a holiday will be made by 4 PM the day before the holiday and will include the same cancellation and push back rights provided for Monday.

(9) Any man short at time work is scheduled to commence will be secured by replacement from the dispatching office.

(10) Ship side orders. The employer must notify the gangs and the dispatching office not later than 3 PM of the day they are working whether or not they are required back that night or the following day for the same vessel. Provisions of paragraph 6 to apply.

• • • • • • • •

12. *Flexibility.*

(a) Where an employer hired for two or more vessels for an 8 AM start and one of the vessels was delayed in arriving and was put back to a 1 PM start, the gangs hired on that vessel, which normally would be set back to await the arrival of the ship at 1 PM, may be used at the employer's discretion on his other ships during the morning period, subject to a four hour afternoon guarantee for the original ship.

(b) Having completed a work period on one vessel gangs may, at the beginning of the succeeding work period, with the prior approval of the Joint Dispatching Committee, be transferred to another job to supplement the gang or gangs previously hired in accordance with the provisions of Section 10 hereof, with the understanding that the work remaining in the hatches on the original vessel will be completed by the gangs remaining thereon, subject, however, to the condition that opportunities on other ships shall be as great or greater than those on the original ship.

(c) The employer will have first call on gangs registered with his company through the joint dispatching office. Where these gangs will work for another employer on a day on which their regular employer has no work, it is understood that these gangs may be recalled on a subsequent day to their regular employer. The work on the first vessel will, in this case, be completed by such gangs as may be available and secured through the joint dispatching office.

(d) After a vessel has worked through one or more guaranteed periods and there remains work on the vessel, certain gangs may be released at the discretion of the operator with the approval of the Joint Dispatching Committee, and re-registered at the joint dispatching office to be available to accept new work assignments with as great [fol. 14] or greater work opportunity on the same or next day. The vessel shall be completed with the remaining

gangs and the gangs which have been replaced will have no claim to work on the vessel provided that the gang received a job assignment for another hire through the joint dispatching office.

[fol. 16] 16. *Other Terms*

Except as specifically enumerated above, all other terms and conditions contained in the expired contract between the parties hereto shall be incorporated and become a part of this agreement with the appropriate changes for dates, rates, etc. Where clauses contained in the expired contract conflict with the provisions of this agreement, the provisions of this agreement shall prevail.

[fol. 17] 18. *Complete Settlement*

By their execution of this agreement, the parties hereto agree that all issues between them have been completely settled in the matter and subject to the terms and conditions hereof, and this agreement is subject to no conditions other than ratification by their respective members.

For International Longshoremen's Association, Local 1291:

/s/ Richard L. Askew

For Philadelphia Marine Trade Association:

/s/ Alfred Corry

[fol. 18]

EXHIBIT B TO COMPLAINT

AGREEMENTS

Negotiated by the

PHILADELPHIA MARINE TRADE ASSOCIATION

For Its Members

with the

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

(AFL-CIO)

for the

PORT OF PHILADELPHIA AND VICINITY

(Including all points on the Delaware River from Trenton, New Jersey to Artificial Island, Inclusive)

Effective October 1, 1959 to September 30, 1962

Issued by

PHILADELPHIA MARINE TRADE ASSOCIATION

Room 484, Bourse Building

Philadelphia 6, Pa.

* * * * * * *

[fol. 18a]

LONGSHOREMEN'S AGREEMENT

THIS AGREEMENT made and entered into this 23rd day of December, 1959, by and between the members (hereinafter sometimes referred to as "the Employers" or "the Employer-members") of the PHILADELPHIA MARINE TRADE ASSOCIATION (hereinafter sometimes referred to as "the Association") of the Port of Philadelphia and Vicinity, as parties of the first part, and LOCALS 1290, 1291, 1332 and 1694 of the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

(AFL-CIO) (hereinafter sometimes referred to as "the I.L.A." or "the Unions") as parties of the second part, covers the work pertaining to the rigging of ships, loading and unloading of all cargoes, including mail, ships' stores and baggage, in the Port of Philadelphia and Vicinity, including all points on the Delaware River from Trenton, New Jersey, to Artificial Island, inclusive.

The Employer-Members of the Association agree that they will not directly perform work done on a pier or terminal or contract out such work which historically and regularly has been and currently is performed by employees covered by this agreement or employees covered by I.L.A. craft agreements unless such work on such pier or terminal is performed by employees covered by I.L.A. agreements.

[fol. 18b] 9. Guarantees:

(a) Men employed from Monday to Sunday, inclusive, shall be guaranteed four (4) hours' pay for the period between 8:00 A.M. and 12:00 Noon, regardless of any condition.

(b) Men re-employed at 1:00 P.M. from Monday to Sunday, inclusive, shall be guaranteed four (4) hours, with the exception of the finish of the hatch, or of a ship, which they shall receive a minimum of two (2) hours.

(c) Men hired for 1:00 P.M. from Monday to Friday, inclusive, who have not worked in the morning shall be guaranteed four (4) hours.

(d) Men hired for 1:00 P.M. on Saturday, Sunday or a Legal Holiday who have not worked in the morning shall be guaranteed four (4) hours.

(e) Men re-employed at 7:00 P.M. from Monday to Sunday, inclusive, who have worked during the day, may receive a minimum of two (2) hours due to weather conditions, or the finish of a ship or of a hatch (or upon the shifting of

a ship to drydock or to another terminal in the port), otherwise a guarantee of four (4) hours.

(f) Men who have been ordered to report for work from Monday to Sunday, inclusive, at 5:00, 6:00, or 7:00 P.M. and have not worked during the day shall be paid until 11:00 P.M.

(g) Men re-employed at 1:00 A.M. from Monday to Sunday, inclusive, shall receive a guarantee of four (4) hours with the exception of weather conditions or the finish of the hatch or of a ship when they shall receive a two (2) hour minimum.

(h) If a ship is knocked off on account of inclement weather by the Ship's Master or his authorized representative, the men will be paid the applicable guarantee, but in the event the men knock off themselves, they will be paid only for the time worked, regardless of guarantee provided for in this Agreement.

[fol. 18c] (i) Men employed between 8:00 A.M. and 12:00 Noon who continue working through the meal hour and are relieved at 1:00 P.M. shall be notified prior to 1:00 P.M. that they are finished for the day, or if ordered back at 2:00 P.M. shall receive three (3) hours' pay at the straight time rate, except when the ship or the hatch in which the men are employed completes discharging or loading in less time, they shall receive a minimum of two (2) hours' pay.

(j) Gangs shall be knocked off at a reasonable time, not less than ten (10) minutes before quitting time, to replace hatch covers. The full gang shall be used to remove or replace hatch covers.

* * * * * * *

[fol. 18d] 28. Grievance Procedure: All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement, and all ques-

tions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union. Either party in connection with any dispute or grievance where visual observation may be helpful in the resolution of the dispute or grievance may request that the joint Grievance Committee meet at job site. Either party may also request that the Arbitrator selected in accordance with the provisions hereinafter set forth appear at job site where a visual observation would aid in resolving the dispute or grievance, and the Arbitrator shall appear where possible at the same time that the Joint Grievance Committee appears at the job site, at which time in the event of a disagreement in the Grievance Committee, either party may request the Arbitrator to render an immediate decision at job site. Should the Grievance Committee be unable to resolve the issue sub-
[fol. 18e] mitted and should neither party request an immediate decision from the Arbitrator, then the grievance or dispute shall be submitted to a Joint Grievance Panel consisting of three representatives of the Association and three representatives of the Union. To the end that there shall be no work interruptions and to the end that there shall be limited necessity for arbitration, the Panel shall make every effort to resolve all grievances or disputes which could not be resolved by the Grievance Committee. The Grievance Panel shall meet bi-weekly and shall not only attempt to resolve the grievances of the previous two weeks, unresolved by Grievance Committees, but shall also consider any prospective grievance that can be anticipated in the ensuing two weeks. Should the Panel be unable to resolve a grievance or dispute which arose in the previous two weeks, or be unable to resolve a grievance or dispute anticipated in the ensuing two weeks, the dispute or grievance, including matters of interpretation of

the contract, shall be referred to an Impartial Arbitrator who shall be selected to serve for a period of one year from a panel of five arbitrators to be submitted by the American Arbitration Association. From the panel of five, each side shall alternately strike two names each, and the person whose name remains shall be the Arbitrator. The Arbitrator thus selected shall conduct his hearings and procedures in accordance with the Rules of the American Arbitration Association, except that he shall be obliged to render his decision within forty-eight hours of the conclusion of his hearings or procedures. The term of office of the Arbitrator first selected shall expire September 30, 1960, at which time the parties may agree to renew the contract of the Arbitrator for an additional year, or either party may request the American Arbitration Association to submit a new panel of five names from which a new Arbitrator will be selected, as was the first Arbitrator. The same procedure shall be followed in the renewal of a [fol. 18f] contract of an Arbitrator and the selection of a new Arbitrator for the third year of this collective bargaining agreement. Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute, or should a provision of this agreement be the subject of disputed interpretation, the Arbitrator shall consider port practice in resolving the issue before him. If the Arbitrator determines that there is no port practice to assist him in determining an issue not specifically provided for in the collective bargaining agreement, or no port practice to assist him in resolving an interpretation of the agreement, the issue shall become the subject of negotiation between the parties. There shall be no strike and no lock-out during the pendency of any dispute or issue while before the Grievance Committee, the Joint Panel, or the Arbitrator.

29. No Steamship Company or Contracting Stevedore and no official, District Council or Local of the International Longshoremen's Association shall make any change

in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties, shall be adjusted in accordance with Article 28 hereof.

• • • • • • •

[fol. 18g] SIGNED at Philadelphia on the day and year first above written.

PHILADELPHIA MARINE TRADE ASSOCIATION

By: R. J. Hughes, President
Alfred Corry, Chairman
F. H. Muldoon
J. N. Russell
Herman Meyle
H. W. Jackson
W. J. Gilfillan
J. C. Crueger
Herbert Brodhag
W. S. Oberholtzer
Frank J. Lynch

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (AFL-CIO)

By: James T. Moock, International Vice-President
Clifford Carter, Vice-President, A.C.D.
Richard L. Askew
Martin Welsh
Joseph S. Kane
John J. Smith
Paul Johnson, Jr.
Alexander Talmadge, El.
E. Carter Lyles
Wm. Bailey
Russell Williams
Ernest Terry

[fol. 19]

EXHIBIT C TO COMPLAINT

In the Matter of the Arbitration between

PHILADELPHIA MARINE TRADE ASSOCIATION

and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

(A.F.L.-C.I.O.) LOCAL 1291

OPINION OF ARBITRATOR

Three hearings were held in the above entitled matter, on Friday, April 30, 1965; Monday, May 3, 1965 and Wednesday, May 5, 1965.

Friday, April 30, 1965

BEFORE:

MILTON M. WEISS, Esq., Arbitrator
2101 Chestnut Street
Philadelphia, Pennsylvania

[fol. 20]

APPEARANCES:

ABRAHAM E. FREEDMAN, Esq.
1415 Walnut Street
Philadelphia, Pennsylvania

for International Longshoremen's Association

FRANCIS A. SCANLAN, Esq.
926 Four Penn Center Plaza
Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

Richard L. Askew, President, Local 1291
James T. Moock, International Vice President
Alexander Talmadge, Business Agent, Local 1291
Paul Johnson, Business Agent, Local 1291
Edward Devine, Business Agent, Local 1291
John Smith, Business Agent, Local 1291
Joseph Kane, Secretary Treasurer, Local 1291
William Gosnear, President, Local 1566
Aaron Daniels, President, Local 1332

[fol. 21]

On Behalf of Philadelphia Marine Trade Association:

Alfred Corry, Executive Secretary
Joseph Russell
James Trainer, Secretary
Herbert Brodhag
John Pinnell

Monday, May 3, 1965

Appearances:

Abraham E. Freedman, Esq.
1415 Walnut Street
Philadelphia, Pennsylvania

for International Longshoremen's Association

Francis A. Scanlan, Esq.
926 Four Penn Center Plaza
Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

Richard L. Askew, President, Local 1291
James T. Moock, International Vice President
Alexander Talmadge, Business Agent, Local 1291
Paul Johnson, Business Agent, 1291
[fol. 22]
Edward Devine, Business Agent, Local 1291
John Smith, Business Agent, Local 1291
Joseph Kane, Secretary Treasurer, Local 1291
William Gosnear, President, Local 1566
Aaron Daniels, President, Local 1332

On Behalf of Philadelphia Marine Trade Association:

Alfred Corry, Executive Secretary
Joseph Russell
James Trainer, Secretary
Herbert Brodhag
John Pinnell

Wednesday, May 5, 1965

Appearances:

Abraham E. Freedman, Esq.
1415 Walnut Street
Philadelphia, Pennsylvania

for International Longshoremen's Association

Francis A. Scanlan, Esq.
926 Four Penn Center Plaza
Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

[fol. 23]

Richard L. Askew, President, Local 1291
James T. Moock, International Vice President
Alexander Talmadge, Business Agent, Local 1291
Paul Johnson, Business Agent, Local 1291
Edward Devine, Business Agent, Local 1291
John Smith, Business Agent, Local 1291
Joseph Kane, Secretary Treasurer, Local 1291
William Gosnear, President, Local 1566
Aaron Daniels, President, Local 1332

On Behalf of Philadelphia Marine Trade Association:

Alfred Corry, Executive Secretary
Joseph Russell
James Trainer, Secretary
Herbert Brodhag
John Pinnell

[fol. 24]

1. Facts:

The Philadelphia Marine Trade Association, hereinafter called the "Employer" and the International Longshoremen's Association, Local No. 1291, hereinafter referred to as the "Union," are parties to a Memorandum of Settlement dated February 11, 1965 (Joint Exhibit No. 1).

On or about 7:40 A.M., April 26, 1965, a representative of the Union observed several gangs at various companies along the Philadelphia waterfront, including T. Hogan Corporation, J. A. McCarthy Company, Murphy Cook Company, etc., who had been hired to begin work at 8:00 A.M., but who had been informed by the Employer that they were set back to report back for work at 1:00 P.M. There was some disagreement between the Employer and the Union as to the reason for the setback, the Union contending that the Employer in most instances had given incle-

ment weather as the reason; the Employer, on the other hand, endeavoring to show during the Hearing that the weather was not inclement during the early morning hours.

Testimony during the Hearing indicated that there had been some prior discussion between the Employer and the Union concerning the interpretation of the following clauses in the Memorandum of Settlement dated February 11, 1965 referred to above:

> *"10. Hiring System*
>
> (5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.

[fol. 25]

> (6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

2. Issue Involved:

Whether the provisions in the Memorandum of Settlement referred to above, i.e., Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A.M. to 1:00 P.M. is conditioned *solely* upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?

POSITION OF THE PARTIES

3. Employer's Contention:

The Employer contends that paragraph 10(6) of the Memorandum of Settlement gives the Employer the right

to set back a gang without qualification. Their contention is based upon the language used in the agreement and pre-contract negotiations. Towards that end the Employer introduced testimony at the Hearing to show that one of the major changes in the new contract related to the Hiring System. In other words, under the old contract there was a daily hire from Monday to Saturday and for work to commence at 8:00 A.M. in the morning the Employer hired at 7:30 A.M. on the same day. If the Employer did not want to hire any of his longshoremen he had a right to say that there was no work today and the employees were dismissed, without any payments made by the Employer at all. (Notes of Testimony, page 42).

[fol. 26] It was further stated by the Employer that under the terms of the new contract, as it related to Hiring System, the Employer had agreed to a day before hire. This meant, therefore, that if a worker was needed for 8:00 A.M. start tomorrow morning, an order would have to be placed by the Employer by 4:00 P.M. of the previous afternoon. The Employer has no right to cancel such hire unless the ship does not arrive on a Monday or a day following a holiday, in which case the Employer could cancel by 7:30 A.M. of the day of scheduled work. (Notes of Testimony, page 43).

It was the Employer's further contention that day before hire was tied in with the guaranteed income plan provided for in the new contract. Employer's testimony emphasized that day before hire also carried with it the right of the Employer to set back gangs ordered for an 8:00 A.M. start Monday through Friday if such set back was invoked by the Employer by 7:30 A.M. on the day of work to commence. The setback under these circumstances as provided by Section 10(6) was from 8:00 A.M. to 1:00 P.M., at which time a four hour guarantee would apply, plus one hour guarantee for the morning period. The Employer made reference to Union Exhibit No. 2, titled "Central Hiring Point" which was a proposal of the Employer made on or about January 7, 1965. Among the items proposed was that

having to do with the Hiring System and in that proposal, paragraph 5 under Hiring System provided as follows:

> "For work commencing at 8:00 A.M. on Monday or the day following a holiday, employers to have the right for any reason to cancel the gang."

[fol. 27] In the same proposal paragraph 6 under Hiring System provided:

> "Gangs ordered for an 8:00 A.M. start Monday to Friday can be set back to commence at 1 PM at which time a four hour guarantee shall apply."

Employer testified that the above proposals were rejected by the Union. "They wanted no cancellation rights at all, at first, and they wanted no push back rights. They would give us no push back rights." (Notes of Testimony, page 48). The Employer further testified that a final offer was made by the Employer on February 5, 1965, as contained in Union Exhibit No. 3 titled "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local 1291." Among the proposals contained therein was Section 10(5) and (6) relating to the Hiring System providing as follows:

> "(5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of vessel in port to cancel the gangs by 7:30 A.M.
>
> (6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 A.M. on the day of work to commence at 1 P.M. at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period."

The Employer testified at the Hearing that set back rights were explained to the Union and this can best be reflected by the following extract from the Notes of Testimony, page 52:

[fol. 28]

"Q. Will you tell us what explanation was given?

A. Yes. I, for one, as one of the spokesmen for our association, very specifically stated a number of times —the Union wants to know just what we meant as set back rights, what conditions and what-have-you, and we mentioned because of inclement weather, No. 1, and because of the possibility of non-arrival of cargo, because of a gear failure on a vessel, and we pointed out to them, time and again, I know that I pointed out to them time and again, that under this set-up here, that the men were being guaranteed unequivocally on the day before hire, with the set back privileges guaranteed a minimum of four-hours pay, and a possible five-hours pay, if we exercised the set back rights."

The testimony of the Employer was to the effect that none of the Union representatives stated during negotiations that set back rights applied only to the non-arrival of a vessel in port (Notes of Testimony, page 53).

Employer testimony alleged that Section 10(6) in the Memorandum of Settlement dated February 11, 1965 was in fact agreed to on February 5, 1965 and between those dates the Union did not ask for any qualifications to be inserted with respect to Section 10(6). (Notes of Testimony, page 56). There were several other Employer witnesses who in a general way testified along similar lines as set forth above.

[fol. 29] It was made clear by Employer testimony that if a man had been hired the day the ship was worked and for any reason he could not continue working he was guaranteed four hours for the morning. (Notes of Testimony, page 124). It may be stated in a general way that it was the Employer's testimony that the language set forth in Section 10(5) and 10(6) was unambiguous; that they should not be considered together, but that they were the result of much negotiation between the parties, and further that there had been changes concerning Section 10(5) and 10(6)

during the course of negotiation, none of which resulted in providing for the non-arrival of a ship as a condition precedent to the right of the Employer to invoke Section 10(6).

4. THE UNION'S CONTENTION:

The Union contends that paragraph 10(6) of the Memorandum of Settlement gives the Employer the right to set back a gang from an 8:00 A.M. start to 1:00 P.M. only in case of the non-arrival of a vessel in port. To support this contention Union testimony contended that there were many discussions with respect to Section 10(5) and Section 10(6); that they were treated together and that neither Section 10(5) nor Section 10(6) could be invoked except for non-arrival of a ship. (Notes of Testimony, page 165 and 166). It was the Union's further contention that Section 9(h) of the previous Colleetive Bargaining Agreement remained intact except for the modification contained in Section 10(5) of the Memorandum of Settlement. (Notes of Testimony, page 167). The Union further testified that on April 21st or April 22nd, there was discussion with Employer representatives concerning the interpretation of [fol. 30] Section 10(6), Employer representative requesting the right to push back for any reason under Section 10(6) and the Union representative taking the position that the right to push back under Section 10(6) was for non-arrival of a vessel only. (Notes of Testimony, page 168).

It was the Union's further contention that one of the major reasons that they went along with the Employer on the question of outright cancellation on a Monday and a day following a holiday was because the New York and Baltimore contracts contained similar provisions. (Notes of Testimony, page 183, 184).

The Union contention is further that during negotiation the Employer representative was asked for an explanation concerning Section 10(6) at which time it was testified the Employer representative stated that Section 10(6) only was applicable in the case of non-arrival of a ship. (Notes

of Testimony pages 203 and 204). Union representative denied that during negotiation the Employer representative stated that Section 10(6) would apply to the non-arrival of cargo, to the breakdown of a ship's gear and for inclement weather, etc.; that the only reason given by the Employer representative for invoking Section 10(6) was the same as that relating to Section 10(5), viz. non-arrival of a ship. (Notes of Testimony, page 204).

The Union contention in relation to the interpretation of Section 10(6) is reflected in the following testimony on page 206 of the Notes of Testimony:

> "A. In the employers' proposal, with respect to 10.5, they sought to have the right to cancel for any condi-
> [fol. 31] tion or any reason, I believe they said. They had no such language, insofar as No. 6 was concerned. Therefore, we asked them, what do you mean by No. 6, what are you going to do? Finally, when they got down to a point where we were somewhat in agreement, insofar as No. 5 and 6 were concerned, except that we wanted some clarification as to what they really wanted with respect to No. 6. They said cancellation for non-arrival of the ship. Muldoon said that."

The Union testimony as to why the words "non-arrival of the ship" was not provided for in Section 10(6) can best be reflected from the Notes of Testimony, page 233:

> "The Witness: It is not in No. 6, for two reasons. One is, as Mr. Muldoon explained to me, that the push backs would be made only for the non-arrival of a ship.
>
> And the other reason is that the employers insisted, throughout the negotiations, that we should reach the point where we could trust each other. And I took what they said as being true, that they would not try to invoke Clause 10.6, except in cases of non-arrival of the ship. I didn't ask too many questions about it, and there wasn't too much said about it."

It was the union testimony that Section 10(6) was to be for set back purposes only and the only circumstance under which it was applicable was because of non-arrival of a ship. (Notes of Testimony page 41).

[fol. 32] There was further Union testimony concerning the interpretation of Section 10(6) reflected on page 278 of the Notes of Testimony:

"*By Mr. Freedman*:

Q. We are talking about the push back now. What was the reason which the employers gave for the push back?

A. The non-arrival of the vessel.

Q. Did they give any other reason?

A. No. There was no other reason."

The Union contended in its testimony that Section 10(5) and 10(6) were considered together, and that it was the Union position that they would go along with the set back provision in Section 10(6) only because of non-arrival of a ship. (Notes of Testimony, page 285).

There was additional testimony by other Union witnesses that during negotiation the only reason the Employer could invoke the push back clause as contained in Section 10(6) was because of non-arrival of a ship. (Notes of Testimony, pages 299, 307, 312 and 313).

In summation, therefore, it can be stated that the Union testimony was to the effect that Section 10(5) and 10(6) of the Memorandum of Settlement should be considered together and that the application of both of these sections was limited to the non-arrival of a vessel in port.

5. Discussion:

After a careful review of the testimony and the numerous exhibits produced at the Hearing, it becomes the Arbitra-[fol. 33] tor's responsibility to rule as to the meaning of Section 10(6) of the Memorandum of Settlement dated February 11, 1965. It would be superfluous to review the

testimony, much of which has been set forth in the Union and Employer Contentions above. It is the Arbitrator's opinion that if the language of an agreement is clear and unequivocal, generally a meaning other than that expressed will not be applied. This is true even though the parties to an agreement as in this case disagree as to its meaning. If the language is unambiguous it is the responsibility of the Arbitrator to enforce the clear meaning. Section 10(5) and 10(6) of the Memorandum of Settlement provides as follows:

"10. *Hiring System*

(5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.

(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

It may be well initially to analyze Section 10(5) in the light of prior negotiations. Precontract negotiations frequently provide a valuable aid in the interpretation of provisions of an agreement. In the instant case, reference is made to the Employer's proposal of January 7, 1965, Union Exhibit No. 2. Reference to paragraph 5 under the caption "Hiring System" provides as follows:

[fol. 34] "For work commencing 8 AM on Monday or the day following a holiday Employers to have the right, for any reason, to cancel the gang."

The wording set forth above was not contained in the Memorandum of Settlement. Instead, subsequent to negotiation

between the parties under date of February 5, 1965 a proposal was made by the Employer contained in Union Exhibit No. 3 titled "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local No. 1291." Reference to Section 10 marked "Hiring System" Subsection (5) reflects the following:

> "For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M."

It should be noted as reflected in the Notes of Testimony that this change came about as a result of negotiation by the parties, and instead of a wide latitude contained in original proposal set forth above dated January 7, 1965, there was a major change limiting the rights of cancellation of gangs to a single reason, viz. non-arrival of a vessel in port. This section was written into and became part of the Memorandum of Settlement dated February 11, 1965. Although this particular section is not at issue, it is important, nevertheless, to show that initially there was disagreement between the parties as to the wording of the provision which was changed after continued negotiation and discussion.

[fol. 35] Directing our attention now to Section 10(6) of the Memorandum of Settlement dated February 11, 1965, it may be well to review prior negotiations as to this section in order to arrive at its meaning. Here again reference to the Employer's proposal of January 7, 1965, Union Exhibit No. 2, under the title "Hiring System," paragraph No. 6, reflects the following:

> "Gangs ordered for an 8 AM start Monday to Friday can be set back to commence at 1 PM at which time a four hour guarantee shall apply."

The parties could not agree on this wording and subsequent to discussion and negotiation, much of which is re-

flected in the testimony, there was submitted on February 5, 1965 as reflected in Union Exhibit No. 3, "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local No. 1291" the following section under Section 10 "Hiring System" subsection 6:

> "Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period."

Reference to the Notes of Testimony indicate that at one point, the Union argued for a two hour guarantee for the morning period; however, after much discussion and negotiation this particular section is reflected in the Memorandum of Settlement of February 11, 1965 as follows:

> [fol. 36] "Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

It is obvious, therefore, that changes in the provisions were made based upon contentions and negotiations of both parties until the wording was finalized. It is the contention of the Employer that the language in Section 10(6) is clear and that the right to set back is without qualification. In this regard it should be noted that this section provides a possible 5 hour guarantee to the worker, one hour for the morning period and 4 hours for the afternoon.

It is the Union contention that during negotiations Section 10(5) and 10(6) were considered together and that the restriction in the application of Section 10(5) viz. non-arrival of a vessel in port, is applicable to Section 10(6). This contention is based upon testimony of Union representatives as to the explanation of Section 10(6) given by

the Employer during negotiations. On the other hand, the testimony of Employer representatives relating to the same subject is in direct contradiction, i.e. that the Employer representatives explained to the Union representatives during negotiations that the set-back provision contained in Section 10(6) would not be limited to the case of non-arrival of a vessel in port, but would also be applicable for other reasons such as inclement weather, breakdown of a ship's gear, non-arrival of cargo, etc.

[fol. 37] It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed. If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965.

For the reasons set forth above, the Arbitrator makes an Award as follows:

6. AWARD:

The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs "ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence

at 1 PM, at which time a 4 hour guarantee shall apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period," may be invoked by the Employer without qualification.

[fol. 38] The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied.

/s/ Milton M. Weiss
MILTON M. WEISS, Arbitrator

Dated: June 11, 1965.
Philadelphia, Pennsylvania

[fol. 39]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

ORDER—August 2, 1965

And Now to Wit, this second day of August, 1965, upon consideration of the within complaint and upon motion of Kelly, Deasey & Scanlan, Esquires, counsel for the plaintiff, the defendant is hereby ordered to show cause why it has not complied with the Arbitrator's Award of June 11, 1965.

Hearing shall be held on the within complaint on Tuesday, the 3rd day of August, 1965 at 11:00 A.M.

By the Court, R. Body, J.

[fol. 40]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

MOTION TO DISMISS COMPLAINT

Defendant, International Longshoremen's Association, Local 1291, moves this Honorable Court to dismiss the Complaint in this matter for the following reasons:

1. The plaintiff has failed to state a claim upon which relief can be granted, insomuch as it has prayed this Court to order the defendant to show cause why it should not comply with the Arbitrator's Award of June 11, 1965, but the facts pleaded fail to allege facts to support non-compliance with any such Award.

2. The relief sought by the plaintiff is, in fact, injunctive relief which Federal Courts are without jurisdiction to grant by virtue of Section 4 of the Norris-LaGuardia Act, 29 U.S.C., Sec. 104. See *Sinclair Refining Company* v. *Samuel M. Atkinson, et al.*, 370 U.S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328.

Wherefore, it is prayed that this Honorable Court dismiss the Complaint.

Freedman, Borowsky and Lorry, By Joseph Weiner,
Attorneys for Defendant.

[fol. 41]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

Hearing Re: Order to Show Cause—August 3, 1965

Philadelphia, Pa.

Before Hon. Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan, by William R. Deasey, Esq. and Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry, by Joseph Weiner, Esq. and Avram G. Adler, Esq., for defendant.

[fol. 42] The Court: Gentlemen, we will proceed with the hearing now in the matter of the Philadelphia Marine Trade Association against the International Longshoremen's Association, Local 1291, piers of southwest Philadelphia, Civil Action No. 38647.

I have been waiting for a message to come from my chambers so that when that message comes there will be an interruption.

Mr. Weiner: If Your Honor please, Joseph Weiner of Freedman, Borowsky and Lorry. Mr. Adler is with me from our firm.

Before we get started I would like to file with the Court a motion to dismiss the complaint on jurisdictional grounds since it is our position that the plaintiff's prayer here is for injunctive relief and that the Federal court under Norris-LaGuardia does not have authority to grant injunctive relief in cases arising out of labor disputes.

STATEMENT BY MR. DEASEY ON BEHALF OF THE PLAINTIFF

Mr. Deasey: May it please the Court, my name is William Deasey of the law firm of Kelly, Deasey and Scanlan who are counsel for the Philadelphia Marine Trade Association.

Your Honor, contrary to what Mr. Weiner has stated we have set forth a complaint on behalf of the Philadelphia Marine Trade Association against the International Longshoremen's Association, Local 1291—

The Court: Not quite so fast.

Mr. Deasey: —stating that the action arises under the provisions of the Labor Management Relations Act, specifically Section 185 of the United States Code, Title 29, or Section 301 of the Act as it is commonly known.

[fol. 43] The gravamen of our complaint is simply this, that on June 11, 1965, under the terms of the currently existing collective bargaining agreement an arbitrator by the name of Milton Weiss handed down an arbitration award relative to certain terms of the contract between the parties.

In accordance with the terms of the contract, specifically Section 10(6), the employer has the right to set-back certain gangs when hired. Recently a determination, or, rather, a dispute arose with regard to the implementation of this particular arbitrator's award and specifically the issue arose on July 30, last Friday, and at that time when the employer attempted to set-back certain gangs which he had hired the day before for work on July 30, the union took the position that they would not abide by the arbitrator's award.

We believe that this is, first of all, a breach of the contractual obligation which the union has undertaken. It certainly is a repudiation of the arbitrator's award, and, contrary to the position stated by the counsel for the defendant, we are before the Court at the present time asking for an order for specific performance, to wit, an order

which would force the union to comply with the terms of the arbitrator's award.

We believe that the action is well taken under the law, as I stated before, the Labor Management Relations Act, 1947, specifically Section 301, and that case law has since sustained the position, namely, the Lincoln Mills case, and also the Steelworkers v. Enterprise Wheel and Car Corporation, the Lincoln Mills case being 353 United States 448, the Steelworkers case being 363 U.S. 593.

The Court: Mr. Weiner?

[fol. 44]

STATEMENT BY MR. WEINER ON BEHALF OF DEFENDANT

Mr. Weiner: Yes, sir. If it please the Court, we feel that the relief requested by the plaintiff as we previously stated is actually for an injunction, and under the Sinclair Refining Company v. Atkinson case, a copy of which I have here if Your Honor would care to see it, a Supreme Court case which is clearly on all fours, it clearly states that in the circumstances the Federal court has no jurisdiction to enter an injunction for any kind of injunctive relief.

In the Sinclair case the prayer was also for an order to compel compliance with the contract and the Court in a five-to-three decision, five to two with one Justice abstaining, clearly stated that the Norris-LaGuardia Act was not affected in this respect by the Taft-Hartley Act, that the prohibition against injunctions is in full force, and that under no circumstances in a case evolving out of a labor dispute can a Federal court grant an injunction. I have prepared a counterstatement of the case for Your Honor's convenience.

I would like to point out to Your Honor that actually this is not a case which arises in contravention of this arbitrator's award. We, that is, the union, makes no bones about the fact that they are unhappy with the arbitrator's award, but we realize that we are stuck with it.

This dispute which arose on Friday did not in our opinion arise within the framework of the arbitrator's

award. Briefly what happened was that back in April a dispute arose about a provision in the bargaining agreement between the union and the PMTA. Actually what had been signed was a memorandum of agreement which has not yet been reduced to a formal agreement, but to all intents and purposes, this is the contract that we are working with as it supplements the original agreement.

[fol. 45] Section 10(5) of the agreement provides that on Mondays and on days following a holiday the employer can under certain circumstances by 7:30 in the morning cancel a gang that has been hired. It is important for Your Honor to know that this bargaining agreement which we are now considering is an unusual one and a novel one on the Philadelphia waterfront because it provides that the gangs that do the waterfront work, longshore work, are now hired the day before they go to work. It used—

* * * * * * *

As I started to say, this contract which we are presently working under which is in effect since last October is a novel one for the Philadelphia waterfront because it provides for the first time that the gangs of men who are hired to work the ships be hired the day before they are to go to work. It used to be that the men used to shape-up every morning. They used to go down on the waterfront and wait around, and at 7:00 o'clock they were hired to go to work at 8:00, and if there was no work that day they went home, and if there was no work until later in the day, they would have to hang around until they were hired.

The Court: Now what does the new agreement provide?

Mr. Weiner: The new agreement provides that the men are hired the day before at a central hiring point which is down under the Walt Whitman Bridge.

[fol. 46] The Court: Then they show up for work when?

Mr. Weiner: They report for work either at 8:00 o'clock the following morning or 1:00 o'clock the following afternoon, or in the case of Saturday morning, Sunday morning

or Monday morning, they are told when they are hired when and where they are to report for work.

The Court: Now they report to work for 7:30?

Mr. Weiner: They report to work at 8:00 o'clock.

The Court: 8:00 o'clock?

Now, what does this word "setback" mean?

Mr. Weiner: Now the word "setback" means—

The Court: If there is no work for them, then what?

Mr. Weiner: Once they are hired and they report for work at 8:00 o'clock they are entitled to a minimum of four hours' pay under the contract. There are two provisions which—

The Court: Minimum pay of four hours?

Mr. Weiner: That's right, once they report for work at 8:00 o'clock.

The Court: And even if there is no work?

Mr. Weiner: Even if there is no work, because the minute—the shipping company knows the day before, the stevedoring company knows whether or not there is going to be work. That's why they hire them the day before because they know what ships are coming and then hire specifically the number of gangs for each ship.

The Court: The ship may be down the Delaware somewhere.

[fol. 47] Mr. Weiner: That's where we get to these two provisions that provide for setback and cancellation. There are two provisions.

Section 10, subparagraph 5, provides for cancellation of a gang before 7:30 on a Monday morning or a day following a holiday strictly for the non-arrival of a vessel. In other words, if they had expected a vessel in on a Monday morning, therefore, they hired a gang on Friday, Monday morning the vessel didn't show up, the stevedore company notifies the men before 7:30 that the vessel has not showed up and they can cancel.

The Court: Then what?

Mr. Weiner: That's it.

The Court: Then they are entitled to four hours' pay?

Mr. Weiner: No.

The Court: If they are notified before 7:30 they are not entitled to anything?

Mr. Weiner: There is a cancellation provision that provides for cancellation.

The Court: If they are notified at 8:00 o'clock?

Mr. Weiner: No, if they are notified at 8:00, they are entitled to their four hours. They have to be cancelled by 7:30. The provision that we are—

The Court: In other words, it permits them to work for somebody else?

Mr. Weiner: That's right, or go home.

[fol. 48] The provision that we are concerned with this morning primarily is a provision, Paragraph 10, Subsection (6) of the agreement which is Exhibit "C", I believe, to the complaint, which provides that Monday through Friday the stevedoring company may set back the gang until 1:00 o'clock if the men are notified at 7:30, and that's the position that gave rise to the dispute which is before Your Honor today.

Now, these two provisions—primarily, the setback provision—were the subject of an arbitrator's award back in April, and the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer.

In any event, the provision clearly provides that if there is to be a setback the men must be notified at 7:30 A.M., and if they are notified at 7:30 they receive one hour's pay, and then if they work later in the day, they will get paid for whatever time they work. However, if they are not notified at 7:30, and if they actually report to the job at

8:00 o'clock, it is our position that the four-hour guarantee comes into play.

However, I should like to point out to Your Honor that I don't think we need get into all of that today for this reason: First, I think that our objection on the jurisdictional ground is a very strong one and a valid one, and I [fol. 49] think that if Your Honor will see fit to consider that, we would like to submit briefs on that point, and if Your Honor agrees with us, that will be the end of it.

The matter is now a moot one since the men involved in this particular dispute were this morning paid by the employer the four hours which they claim they were entitled to receive and they are presently working at Pier 179 and Pier 181 on the two ships involved, so it is not a question of getting the men back to work; they are back to work.

The Court: All the men are back to work that we are concerned with on this particular ship?

Mr. Weiner: Absolutely, two ships.

The Court: I read, of course, the complaint and at the time that the averments were placed they were not back to work.

Mr. Weiner: Yesterday they were not back to work. This morning—.

The Court: Was it yesterday?

Mr. Weiner: What is that?

The Court: I don't know what date was averred, whether it was Friday or yesterday.

Mr. Weiner: The dispute arose Friday morning. The ship did not work Friday; she did not work Saturday.

The Court: If the question is moot, why do we have a hearing?

Mr. Weiner: I don't know. I would like my opponent to answer that.

The Court: If the men are back at work—

[fol. 50] Mr. Deasey: Your Honor, it is true that the men have gone back to work today. We don't believe that the question is moot because the question as stated in our

complaint is a very vital one and that is this, that the union has taken the position at least to representatives of the PMTA and also to the employer's representatives that they do not intend to abide by the positions of the arbitrator's award, and I am referring in all instances now to the June 11 award with respect to 10(6) of the contract, and we think this is vital because while it is true that the men went back today to work, the employer had to put them back because of economic duress. He was obliged by his principals to put the men back to work.

This is not a solution to a problem on the waterfront. We believe that we are entitled to a legal solution to a problem which has arisen under the terms of the contract and which the union has at least up to today or up to this morning at least taken the position they do not intend to abide by the terms of the arbitrator's award.

The Court: Well, they haven't taken that position this morning.

Mr. Deasey: Well, Your Honor—

The Court: If I understand Mr. Weiner correctly, they don't take that position now. They just don't like the referee's position or arbitrator's position.

Mr. Weiner: We do not take that position.

The Court: What?

Mr. Weiner: And we have never taken the position. We have taken the position that although we don't like this award we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter.

[fol. 51] The Court: Well, now, I thought, Mr. Weiner, you had. Wait a minute. There was a little double talk in what you said, but I believe maybe now I didn't understand you.

Mr. Weiner: All right.

The Court: One of the situations you said was that—I didn't quite understand because I understand from the lawyer for the plaintiff, Mr. Deasey, in his statement and

then in yours, the latter part of your statement, that if the men were shaped up on a Friday to come in on Monday and they came in on Monday, and there was no work there because the ship hadn't arrived, inclement weather or something, then they were told to come back at 1:00 o'clock. I understood from him, Mr. Deasey, that they were entitled to one-hour's pay, and from 1:00 o'clock on, regular pay.

Is that right, Mr. Deasey?

Mr. Deasey: Your Honor, no, sir. May I correct that? We are talking about two different provisions of the contract.

What Mr. Weiner related to was the provision of 10(5) which relates to cancellation. That is not involved in this particular case nor is it involved in—

The Court: Well, cancellation, on cancellation—

Mr. Deasey: Cancellation, the men don't get anything.

The Court: Yes, but if the cancellation doesn't take place until a certain time, they get paid. Isn't that right?

Mr. Deasey: This is correct, as far as cancellation is concerned.

The Court: In view of the fact that I am thoroughly confused, let's start over again.

[fol. 52] Mr. Deasey: Very well.

The Court: I want to know under what situation they are entitled to the one-hour pay and when they are not entitled to one-hour pay.

Mr. Deasey: Very well, sir.

The Court: One question at a time. Now, when are they entitled to that?

Mr. Deasey: They are entitled to the one-hour pay when a gang, having been ordered on the day before, is notified prior to 7:30 on the succeeding morning that for whatever reason they, the gang, will be set back until 1:00 o'clock. At that time, they are entitled there to one-hour's pay at that particular time, and they are entitled to come back at 1:00 o'clock to work.

If they do not work at 1:00 o'clock they are entitled to four hours' pay, so that in toto, if they do not work the day after they have been notified that they will be hired—

The Court: They get paid for five hours?

Mr. Deasey: Five hours, that is correct.

The Court: For not working?

Now, I understood from him that they got four hours. Now, is he right, Mr. Weiner?

Mr. Weiner: Well, he is right and he is wrong, because it depends on the factual situation.

A gang is hired on Thursday.

[fol. 53] The Court: For—

Mr. Weiner: At 4:00 o'clock.

The Court: For—

Mr. Weiner: To report to work at 8:00 A.M. on Friday morning aboard a particular vessel at a particular pier.

The Court: Yes.

Mr. Weiner: Now, Section 10(6) of the contract which is the one that we are concerned with reads as follows—let me read it so Your Honor knows what we are talking about:

Gangs ordered for an 8:00 A.M. start Monday through Friday can be set back—that is, their starting time can be pushed back—at 7:30 A.M. on the day of work to commence at 1:00 P.M. at which time a four-hour guarantee shall apply—that's at 1:00 o'clock—a one-hour guarantee shall apply for the morning period until employed during the morning period.

Now, a man hired at 4:00 o'clock on Thursday as he was in this case, and he is told that, "8:00 o'clock tomorrow morning you report aboard the Steamship 'Skaugran' which is going to be at Pier 179, Port Richmond, Philadelphia, and go to work." Our man shows up there at 8:00 o'clock. He has not received any notification that there is going to be a setback, and at 8:00 o'clock he is told, "The vessel is not here; she couldn't get into the pier,"—whatever the reason was—"Come back at 1:00 o'clock."

[fol. 54] The guy says, "I will be happy to come back at 1:00 o'clock, but since you didn't notify me at 7:30, which is what your contract provides, I want to get paid for my morning's work because I came here ready to work."

Now, this is in a sense what the dispute is about. Mr. Deasey says that he is entitled only to the one hour for the morning. We say that since he was not notified at 7:30 as the contract provides, he is entitled to the four hours.

But again I say to Your Honor that the question is moot today because this morning these men involved in these particular disputes—and there are two of them, two disputes—

The Court: What do you mean, two disputes, two ships?

Mr. Weiner: Two ships.

The Court: Two ships, two piers?

Mr. Weiner: Two ships, two piers, one at Pier 179, the S.S. "Skaugran," and one at Pier 181, the S.S. "Nego Victoria"—seven gangs, ten gangs all together, 220 men. These men were paid this morning the four hours' pay they claimed they were entitled to receive and they are working. They have been working since 8:00 o'clock this morning on both ships, so I don't know what relief Mr. Deasey wants from you. The men are at work.

Mr. Deasey: May I say this, Your Honor, that my statement with regard to the guarantee is correct and I don't think what Mr. Weiner has said derogates against it in any way watsoever. What he has tried to do now is inject a factual issue. We are going on the basis that this is a legal issue to be determined, whether or not the arbitrator's award is entitled to be specifically enforced.

[fol. 55] We have the arbitrator's award. It does apply and it did apply to this situation. It will apply to situations in the future and we think that we are entitled to get an order from the Court which would say, "Yes, this is the arbitrator's award," and require the union to comply with it because otherwise we will be in the exact same situation as we are this morning where after three days in port, the

ships after having amassed damages in excess of $15,000 finally have to capitulate to the economic pressure and pay the men notwithstanding the fact that the award was in their favor, that is, the employer's favor, not in favor of the union men.

This is the issue before the Court. It is not a factual issue at the present time, Your Honor, and one of the reasons why it is not a factual issue is because the factual issues as far as whether or not there was notice, whether or not there has been a particular grievance, should be brought up under the grievance procedure which is in the contract. The law is clear on this as well, that if you have a grievance, you bring it up under the grievance procedure, that if you have a question of damages, you bring it up under the grievance procedure.

There is an action in the courts at the present time with regard to 1291 which relates to this very issue dealing with damages.

The issue that we are here before today on is a legal issue, whether or not the employer with an arbitration award in his favor is entitled to get an order of this Court specifically enforcing the order itself, and we believe that the law backs us up on this case.

Mr. Weiner: If Your Honor please, what Mr. Deasey is clearly asking for—and I don't want to argue the merits [fol. 56] of the case with him—is injunctive relief, the same type of injunctive relief that Sinclair Refining Company asked for in the Sinclair v. Atkinson case where the Supreme Court says, "We cannot grant an injunction in disputes arising out of labor problems; we are prohibited from doing it by the Norris-LaGuardia Act," and I think that Your Honor is prohibited from granting an injunction at Mr. Deasey's request just as the Supreme Court found they were prohibited from doing, and I think that this legal issue as to whether or not the Court has jurisdiction should be thoroughly brief and argued before Your Honor. It is no longer any emergency. The ships are working.

Before Your Honor indicated maybe I was giving double talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this arbitrator's award, even though we don't like it, but we want both sides to live up to the contract. It is not a question only of the union living up to it. Both sides should live up to it. We are willing to live up to it. The men are back at work.

We would like an opportunity to brief the jurisdictional question and have that decided by Your Honor, and if Your Honor agrees with us that the Court has no jurisdiction, that will be the end of the matter, and there wouldn't be any need for taking factual testimony.

The Court: Anything else?

Mr. Deasey: Your Honor, we would request permission to put on the evidence which we believe indicates that the union has taken a position which is adverse to the arbitrator's award and show to Your Honor the dire necessity that we feel is present here in order to get specific performance as distinguished from injunctive relief, I think as anyone could readily distinguish, so that we don't have this thing happening tomorrow morning.

[fol. 57] The Court: I think, counsel, Mr. Weiner, has admitted in his statement to the Court the facts that you are about to prove, that these men did not report, and then, finally they did report this morning and they are working.

Mr. Weiner: The men reported every morning. The men reported to work Friday morning at 8:00 o'clock.

Mr. Deasey: They didn't go to work.

Mr. Weiner: No. They were ready to go to work, but they were told at 8:00 o'clock, "There is going to be a set back." The contract says they have to be told at 7:30. That's what the dispute is about. If they had told these men, if they had notified—

The Court: You agree with that?

Mr. Deasey: We disagree with the facts, Your Honor.

The Court: I will tell you what we will do is this: We will permit you to put the facts on record. The Court will take jurisdiction but it will not render any order, any specific form of order as of this date, because the men are back, but we can put the facts on record, we can discontinue the case, and if something happens, we will just bring the Court up to date. That's all we will do today.

Mr. Deasey: We will have leave at that point, Your Honor, to come and get the Court's—

The Court: Yes, indeed, and likewise the defendants.

Mr. Weiner: We would like Your Honor at least to have us brief the jurisdictional point to see whether or not the Court has jurisdiction. You are not precluding that, are you?

[fol. 58] The Court: No.

Mr. Weiner: You are not deciding today you have jurisdiction, are you?

The Court: I am deciding I have jurisdiction, and if you show me something I don't have when you come in next time, that's it. I am not going to grant the order that is prayed for by the plaintiff. I am just telling you now I have jurisdiction, I will hear them, and I am not granting the order of specific performance.

Mr. Weiner: May we have a specific time, both sides, within which to present briefs to Your Honor on the jurisdiction thing, sir?

The Court: Yes, indeed. I am so busy, you will have plenty of time.

We will hear this testimony because you have your witnesses here.

Mr. Deasey: Yes, Your Honor.

The Court: And this afternoon if the defendant wants to produce anything, I have several hearings scheduled this afternoon—short or long, I don't know—but if you don't want to do it this afternoon, it will be all right. We will do it whenever the time arises.

Mr. Weiner: All right.

* * * * * * *

[fol. 59] FRANCIS A. SCANLAN, Esq.

Direct examination.

By Mr. Deasey:

Q. Mr. Scanlan, will you identify your relationship with the Philadelphia Marine Trade Association.

A. Yes, I am a member of the bar of this court and I am also a member of the law firm of Kelly, Deasey and Scanlan and, as such, we are counsel for the plaintiff in this case, the Philadelphia Marine Trade Association.

Q. Mr. Scanlan, are you familiar with the details of the grievance and arbitration procedure which resulted in the arbitration award of June 11, 1965?

A. Yes, I am.

Q. Will you relate to his Honor the details leading up to the arbitration award at that date.

A. Yes, I will.

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[fol. 60] Mr. Adler: May I object, Your Honor? The arbitrator's award speaks for itself and the circumstances leading up to the arbitrator's award are immaterial and irrelevant. As I understand the issues of this case—

The Court: Overruled. Proceed.

By Mr. Deasey:

Q. Proceed, Mr. Scanlan.

A. After the—the contract that was signed by the parties on February 11, 1965, specifically provided for set back rights by the employers.

Q. What do you mean by "setback rights," Mr. Scanlan?

A. It means that the gangs of longshoremen who are hired the day before can be set back to a later date, namely, at 1:00 o'clock in the afternoon instead of an 8:00 o'clock [fol. 61] start. It provided that where that occurred the

men would receive one hour's pay in the morning and four hours' pay in the afternoon. The contract did not provide for any qualifications whatsoever with regard to the employer's exercising those rights.

However, on April 26 a dispute arose in which the employers invoked the setback rights which are contained in Paragraph 10(6) of the contract between the parties. The union took the position that the employer could not set back the gangs except for the non-arrival of a vessel in port.

Mr. Adler: May it please the Court, may I have a continuing objection?

The Court: Yes, sir.

Mr. Adler: To counsel's setting forth the union's position.

The Court: Yes, sir.

Mr. Adler: I think that's hearsay.

The Court: Yes, sir.

By Mr. Deasey:

Q. Were you there and present and heard the union voice its objections, Mr. Scanlan?

A. Yes, I was present on the afternoon of April 26 when this issue came before both parties, and as a result the parties could not agree under the contract which provides for a grievance hearing initially and then binding arbitration, and as the result, on April 26 the matter was then referred to the impartial arbitrator, Milton Weiss, and Mr. Weiss then conducted the arbitration hearings, and as a result of those hearings he issued his award. [fol. 62] And the first thing that Mr. Weiss did on the first day of the hearing was to ask counsel for either side whether or not his award would be final and binding, and I as counsel for the Philadelphia Marine Trade Association said that it would be, and Mr. Freedman, who represented the defendant in this case, Local 1291, agreed that the award would be final and binding on both parties.

In the course of the hearing each side was asked to set forth what the issue was, and we set forth—I set forth on behalf of my client—that the issue was whether or not there were any qualifications attached to the employer's right to set back men under Section 10(6) of the contract. The union set forth its position by Mr. Askew who read a long statement, which is a matter of record, in which they set forth their position that the employer could only set back men for the non-arrival of a vessel in port.

That issue was framed in the arbitrator's award and, as I recall, I think it appears on page 6 of the award which is Exhibit C, I believe, in this complaint.

The Court: What page?

The Witness: Page 6, Your Honor.

By Mr. Deasey:

Q. What does it say, Mr. Scanlan?

A. It says, "Issue involved: Whether the provisions in the memorandum of settlement referred to above, that is, Section 10, subparagraphs (5) and (6), are to be considered together so that the employer's right to set back a gang from 8:00 a.m. to 1:00 p.m. is conditioned solely upon the non-arrival of a vessel in port, or is the em- [fol. 63] ployer's right under Section 10, subparagraph (6) to set back a gang without qualification?"

That was the issue which was framed before the arbitrator, and after Mr. Weiss conducted hearings on a number of days, he issued his award on June 11, 1965, and at the end of his award, which is on page 18 of the award, he stated as follows:

"The contention of the employer, the Philadelphia Marine Trade Association, is hereby sustained, and it is the Arbitrator's determination that Section 10(6) of the memorandum of settlement dated February 11, 1965 providing gangs 'ordered for an 8:00 a.m. start Monday through Friday can be set back at 7:30 a.m. on the day of work to commence at 1:00 p.m. at which time a four-

hour guarantee shall apply, a one-hour guarantee shall apply for the morning period unless employed during the morning period' may be invoked by the employer without qualification.

"The contention of the union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the memorandum of settlement dated February 11, 1965 referred to above can be invoked by the employer because of non-arrival of a vessel in port is denied."

The Court: You left out one word.

The Witness: Did I, Your Honor?

[fol. 64] The Court: "Can only."

The Witness: "Can only"—"Can only be invoked by the employer because of non-arrival of a vessel in port is denied."

Mr. Deasey: Would you mark this as Plaintiff's Exhibit No. 1 and this as Plaintiff's Exhibit No. 2.

(Notes of testimony of arbitration were marked Exhibit P-1 for identification.)

(Arbitrator's opinion was marked Exhibit P-2 for identification.)

Mr. Adler: In order to save time, Your Honor, we concede that the arbitrator's award attached to the plaintiff's complaint is the arbitrator's award. I don't think that we—

The Court: Having conceded that, there is no point of reading any more from the award.

Mr. Deasey: Right.

The Court: In other words, what I have attached to the complaint, Mr. Adler, is a photostatic copy?

Mr. Adler: Yes.

The Court: And you concede that is a photostatic copy of the original?

Mr. Adler: Yes, Your Honor.

Mr. Deasey: Mr. Adler, would you also stipulate to the effect that there was also an agreement as between the

parties as set forth in the notes of testimony which we have already had identified as Plaintiff's Exhibit No. 1 that this matter would be final and binding? Have you had an opportunity to review it?

[fol. 65] Mr. Adler: I will concede that there were notes taken at the arbitration—

Mr. Deasey: —hearing.

Mr. Adler: —hearing, and I would prefer my concession not to go any further. There are notes of testimony and I—

The Court: Offer the notes of testimony in evidence.

Mr. Deasey: Beg pardon, sir?

The Court: Offer them in evidence.

OFFER IN EVIDENCE

Mr. Deasey: Your Honor, I would like to offer the notes of testimony which we have had marked Plaintiff's Exhibit No. 1 and specifically pages 3 and 4, Your Honor. I would ask permission to be able to substitute copies of pages 3 and 4.

The Court: Let's see pages 3 and 4, please.

Mr. Deasey: Yes, sir.

(Discussion off the record.)

The Court: Photostatic copies of pages 3 and 4 may be submitted later on for the record.

Mr. Deasey: Thank you, sir.

The Court: Now, what about this?

Mr. Deasey: We will take that back, Your Honor, as long as Mister—

The Court: We don't need this because Mr. Adler has agreed—

Mr. Deasey: That's right.

The Court: —that the photostatic copy in the original complaint is a true and correct copy of the original opinion of Milton M. Weiss, Esq., arbitrator.

[fol. 66] Mr. Deasey: Thank you, sir.

Mr. Adler: Do I understand, Your Honor and Mr. Deasey, you are offering pages 3 and 4 of the record so that the record is not being burdened by the entire transcript?

Mr. Deasey: That's correct, Your Honor, I offer that. That is all, Mr. Scanlan.

Mr. Adler?

Cross examination.

By Mr. Adler:

Q. Mr. Scanlan, did you stay with the entire arbitration proceeding before Mr. Weiss?

A. Yes, I was present from the very beginning. I attended each of the hearings and I was there until it concluded, the hearings were concluded.

Q. And you are familiar with the award of the arbitrator on page 18, paragraph 6?

A. I will refer to that, Mr. Adler, if you give me a second.

Yes, as a matter of fact, that is the section of the arbitrator's award which I just read into the record.

Q. And in arriving at that award, is it not true that the arbitrator said that he was so ruling because this memorandum of agreement had been arrived at at many sessions and therefore he was going to enforce the language of the memorandum which is clear and unequivocal?

[fol. 67] A. Yes, I think he did say that, but the language as far as the setback was concerned, that there were no qualifications and that was clear and unambiguous. I believe that's the language that's in the award.

Q. Yes, but that doesn't quite answer my question. If I may sharpen it, perhaps you will.

When he arrived at that statement, he said prior to that that this was an agreement entered into during extensive negotiations and therefore he was going to enforce all the clear and unequivocal language of that memorandum of agreement—

A. With respect—
Q. —as it was—

Mr. Deasey: Are you referring to any particular page, Mr. Adler?

Mr. Adler: I am referring to pages 17 and 16.

Mr. Deasey: Yes.

A. There is a provision on page 17 of the award in which the arbitrator said, "It is the arbitrator's opinion that this Section 10(6) of the memorandum of settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed." That's what he said.

By Mr. Adler:

Q. Yes, and before that, if you will refer back to—
A. I might also add since you brought that up—
Q. —to 16—

Mr. Deasey: Wait a minute.

[fol. 68] A. Excuse me, Mr. Adler. So there is no misunderstanding, he also said that if the arbitrator were to read into Section 10(6) the limitation urged on him by the union, that is, applicable only in case of non-arrival of a vessel in port, he in effect—he would in effect—be writing into the memorandum of settlement something which is not there.

Mr. Deasey: Yes.

By Mr. Adler:

Q. Mr. Seanlan, it was the union's position, was it not, that 10(5) and 10(6) were a unit and therefore the provisions of 10(6) would relate to the qualifications which were set forth in 10(5) and the arbitrator said that the notes of testimony indicate clearly that this agreement was effective—

A. What page are you referring to now, Mr. Adler?

Q. Let me finish—I am reading 16 and 17—that this agreement was the finalization of the wording and that the language of 10(6) was clear and unequivocal and would be enforced in the manner in which it was expressed. Is that not so?

A. No, I don't think that's so. I think what the arbitrator said, that on the issue that was involved, whether there were any qualifications attached to 10(6), that was clear and unambiguous, there were no qualifications attached and therefore he had to enforce the language of the contract as it was written.

Q. All right.

A. But I don't think he said what you just said.

Q. May I read the last paragraph on page 17:

"It is the arbitrator's opinion that this Section 10(6) of the memorandum of settlement dated February 11, 1965 [fol. 69] is clear and unequivocal and should not be given meaning other than expressed."

He did say that, did he not?

A. Yes, that's exactly what he said.

Q. All right. Just say yes or no.

A. Yes, he did.

Q. And because the language of 10(6) was clear and unequivocal, if he were to read anything else into it, he would be in effect writing what he read into it into the memorandum of settlement?

Mr. Deasey: Your Honor, I object to that question.

By Mr. Adler:

Q. Is that not so?

Mr. Deasey: Your Honor, I object to that line of questioning. As a matter of fact, I permitted this to go on. I think that as far as the arbitrator's award is concerned, and as far as his opinion is concerned, they speak for themselves.

Now, what Mr. Adler is doing is trying to raise some speculation through questioning of Mr. Scanlan as to what he might have done under other circumstances, and I believe that that is—

The Court: Objection sustained. The opinion speaks for itself.

Mr. Adler: In order to bring out these points, Your Honor, may I just ask a few more questions?

By Mr. Adler:

Q. The arbitrator did say—as a preliminary question—"The arbitrator has carefully reviewed the testimony as well as exhibits relating"—

[fol. 70] A. Mr. Adler, will you tell me to what page you are referring?

The Court: I have sustained the objection.

Mr. Deasey: Yes, sir. I repeat the objection, Your Honor.

The Court: What you are talking about will be a matter of argument later on, Mr. Adler. I am not precluding you from discussing the arbitrator's opinion but it is not a question of evidence now.

By Mr. Adler:

Q. Well, Mr. Scanlan, you were present during the drawing up of the memorandum of agreement, weren't you?

A. Yes, I was.

Q. All right. And you were present during the arbitration proceedings, were you not?

A. Yes, I was.

Q. And you took the position that the language of 10(6) was clear and unequivocal in all respects, did you not?

Mr. Deasey: Your Honor, I rise to object again unless Mr. Adler is going to direct his questions to another facet of this case. If he is going to the opinion itself, the opinion once again speaks for itself, regardless of what Mr. Scanlan—

The Court: I don't know what the drive is or the thrust is.

Mr. Deasey: Beg your pardon, sir?

The Court: I don't know what the drive is or the thrust is. Only Mr. Adler knows. Maybe he doesn't know. I don't know.

[fol. 71] Mr. Adler: I do know, Your Honor, if Your Honor would ask, but this is cross-examination and I think it is a fair question.

The Court: I don't know whether it is fair or not, but so far as I am concerned, the opinion speaks for itself. If it concerns the opinion that's that. If it concerns the notes of testimony, you only offered part, put them in the record.

Mr. Adler: Mr. Scanlan testified as to the position of the parties at the arbitration and at the drawing up of the memorandum of agreement. I am just trying to ascertain whether he takes or does not take the position that 10(6) is clear and unequivocal. I think that's a fairly simple question.

This is not the arbitrator's agreement. I am talking about 10(6) which is the clause under which we are—

The Court: That is an interpretation of a legal document, if you want—

Mr. Adler: I will ask—

Mr. Deasey: If you want to answer—

The Witness: I will be happy to answer that question.

The Court: If you want to answer, it is all right with me.

The Witness: We took the position in the arbitration hearing that the question that was involved, there were no qualifications attached to 10(6), was clear and unambiguous, but as far as the issue that was raised, if you are talking about Mr. Weiner's statement today that there had to be notice to the men by 7:30, that was not an issue before the arbitrator and that is not part of Section 10(6), if you are addressing your remarks to that issue.

[fol. 72] By Mr. Adler:

Q. That is not?

A. That is not.

Q. That is not part of 10(6)?

A. That is right.

Q. You mean there is—

A. Section 10(6) does not say how the men are to be notified. It merely says that the gangs shall be set back by 7:30.

The question of notification was another matter which came up after the contract was executed and there the parties agreed as to how the notification should take place, but that was not a matter in the arbitrator's award. It is not referred to in the award and, as a matter of fact, the contract itself relating to the setback does not say how the men are to be notified.

Q. Then you say that the language of 10(6) as to the manner of notification is not clear and unequivocal?

Mr. Deasey: I object, Your Honor. He didn't say that.

The Court: Sustained.

By Mr. Adler:

Q. Do I understand, Mr. Scanlan, that there is some controversy as to how the men are to be notified?

A. No, there isn't any controversy, because the parties have invoked the notification many times since the Joint Dispatching Office was inaugurated. The cancellation clause in 10(5) relates to the same manner of cancellation by 7:30 [fol. 73] A.M. 10(6) relates to set back by 7:30 A.M., and before this arbitration award, and after the arbitration award, the employers cancelled and set back and notified the Joint Dispatching Office in accordance with the mutual agreement between the parties after the contract was executed.

That is the manner in which the notification was done before the arbitrator's award and it is the way in which it was done after the arbitrator's award.

Q. What mutual agreement, Mr. Scanlan?

A. There was a meeting between PMTA and the union after the contract was drawn up to work out the mechanics of the day before hire.

Q. Was this reduced to writing and signed by the parties to this?

A. It was not reduced to writing. It was a meeting which Mr. Corry can testify to. He was present at the meeting and, as Mr. Weiner stated, this whole procedure of the day before hire was something very novel for this waterfront. It was not possible to incorporate into the contract all the details of the mechanics, and after the agreement was executed the parties had several meetings to work out the mechanics of the inauguration of the day before hire, and I know one of the mechanics that was worked out was the question of notification for cancellation and for setbacks in accordance with the contract, and this was arrived at at one of those meetings.

Mr. Corry was present and so were members of the union and he can testify to that.

Q. But this was not argued in any of the hearings that led to this arbitration award?

[fol. 74] A. That issue which Mr. Weiner is raising which is a factual issue which we are prepared to testify with other witnesses was not involved in the arbitration.

Q. That was not involved?

A. Was not involved in the arbitrator's award.

Q. The arbitrator didn't pass on it?

A. He was never asked to pass on it so he couldn't pass on it.

Q. Just answer—

A. It was never—

Q. He did not pass on it; is that right, Mr. Scanlan?

A. It was never brought to his attention by the parties.

Q. He did not pass on it?

A. I think I have answered that.

Q. All right. There is a factual question in this case, is there not, Mr. Scanlan, as to how or when the men were notified; is there not?

A. Not to my understanding, but Mr. Weiner says there is. We don't think there is.

Q. All right, but this question is not covered in the arbitration award at all, is it?

A. That is correct.

Q. All right. And it is the arbitration award of the controversy of April which you have set forth as an exhibit in this complaint that you are seeking equitable relief to enforce; is that right?

[fol. 75] A. That is not right. Our equitable relief is based on the union's assertion that they would not be bound by the arbitrator's award because in spite of the award it still only applies as far as the union was concerned to the non-arrival of a vessel in port, and that was the only reason the employer could set back men. This question of notification is something that was raised by Mr. Weiner.

Q. Mr. Scanlan, you heard Mr. Weiner say at the bar of the court and recorded by the reporter that the union considered itself bound within the perimeter of the arbitrator's report?

Mr. Deasey: As a matter of fact, Your Honor, I don't believe that Mr. Weiner said that they were bound within the perimeter of the award. As a matter of fact, if this is in issue, I would suggest that we go back and see the court reporter's record, because now we are getting out into the gray areas of what the union is bound by.

I object to the question because I think the question is misleading.

Mr. Adler: We are bound by the arbitrator's award, to the award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself. To the extent that it speaks for itself we are so bound.

Mr. Deasey: Your Honor, I don't know whether it is appropriate at this point, but whether we could enter into a stipulation which the Court could accept as a basis of an order, and I am not trying to be smart here, but if the [fol. 76] union is going to take the position now that we are bound by this arbitrator's award, and if the attorney himself representing the union wants to go on record to that effect, and the Court takes judicial cognizance of it, we can terminate this.

Mr. Adler: We are bound, Mr. Weiner made that clear. This Court as Mr. Weiner made clear is I think eminently without jurisdiction because it is clear now that they are trying to enforce an arbitration award that doesn't even apply to this case and they are seeking equitable relief.

The Court: That isn't it at all.

Mr. Deasey: No.

The Court: The only thing that is clear to me that you said—Mr. Weiner said—you are bound by this arbitration award. Now, then,—

Mr. Adler: For whatever that award speaks.

The Court: For whatever that award speaks, so it seems to me all your questions here are just questions; they are not getting anywhere.

Mr. Adler: No, I think my questions, Your Honor—

The Court: Questions, merely stating if it goes beyond the arbitrator's award, the union is not bound. I agree with that. Mr. Deasey agrees with that. Everybody agrees with that.

Mr. Deasey: Yes. I don't agree with that.

Mr. Adler: Mr. Scanlan has admitted on the stand that this situation goes beyond the arbitrator's award.

Mr. Deasey: No, just a moment.

[fol. 77] Mr. Adler: Wait a minute. Let me be heard.

Mr. Deasey: You can be heard.

The Witness: I have not.

The Court: Now, 1, 2, 3, 4 of us talking at the same time.

Mr. Adler: May I make my point, Your Honor?

The Court: I think you have made it, but you make it again.

Mr. Adler: Thank you.

Mr. Deasey has admitted in the questions that I have put to him that—

Mr. Deasey: No.

Mr. Adler: Well, the record will speak for itself—it is not clear and unequivocal.

The Court: Are you going to review this whole case?

Mr. Adler: No.

The Court: What are you trying to tell me?

Mr. Adler: I am saying that on the basis of Mr. Scanlan's testimony as of right now this matter should be dismissed.

The Court: No, I told you that's refused. I have said I will hear the testimony. I will take jurisdiction of the case. In view of the fact that the men are back at work it is moot at the moment. If the situation continues as is, the case just stays on the books; that's all.

I gave a right to either party to bring the matter up.

Mr. Adler: I presume Your Honor has given us an exception on the question of jurisdiction and I presume—

[fol. 78] The Court: Of course.

Mr. Adler: —I assume Your Honor has given an exception on the point of mootness, and I am raising a third point, Your Honor, and if Your Honor will hear me out, Mr. Scanlan by his own testimony has admitted that there is an issue here that never came up before the arbitrator.

The Court: All right. That's true. There are thousands of issues that never came up before him probably.

Mr. Adler: Well, if this present controversy is an issue that never came up before the arbitrator—

Mr. Deasey: He hasn't said.

The Witness: No, I haven't said.

The Court: No, he hasn't said, and that's what you said.

The Witness: That's right.

The Court: You have added words to his mouth, my dear boy, and that you can't do. That might work some place else.

Mr. Adler: If I may be heard, Judge Body.

The Court: You may be heard, but let's stick to the point, not some other point.

Mr. Adler: He has said there is an issue in this case as to when the men are supposed to be notified. This is an issue that never came up before the arbitrator.

The Court: No, he didn't.

[fol. 79] Mr. Adler: Well, now, let me—

The Court: Well, now, look, what else is there to be said on something else?

Mr. Deasey: Your Honor, I would just like to put one more witness on the stand and ask him one question.

Mr. Adler: Wait. I have a few more questions, if I may.

Mr. Deasey: I am sorry. I thought you meant you were completed.

By Mr. Adler:

Q. Mr. Scanlan, when the men did not work on Friday, what did you do if anything or what did Mr. Deasey do? A. Well, now, are you talking about legally?

Q. No, just what did you do?

Mr. Deasey: With reference to what, Mr. Adler?

By Mr. Adler:

Q. What steps, what actions, what type of activity did you then engage in?

A. I was—

Q. It is obvious on Monday you filed a lawsuit. Now, what did you do between Friday and Monday?

A. Mr. Adler, if you were asking me what I did between Friday and Monday, I can tell you. On Friday I wasn't even in my office. I happened to be on vacation when this dispute arose.

Q. Then you didn't do anything on Friday?

[fol. 80] A. So far as this dispute was concerned, I didn't do anything on Friday.

Q. Now, when you returned on Monday—did you return from vacation on Monday?

A. Yes, that's right.

Q. All right. Now, what did you do at that point, if anything?

A. Well—

Q. Prior to filing the lawsuit.

A. Naturally I conferred with my partner, Mr. Deasey, regarding this matter. We discussed it over the weekend. We were very much concerned that a ship had been knocked off and was not working, that there were rumors of this spreading to the entire waterfront on Saturday when we conferred about it.

We understood that there were gangs that were going down on the waterfront that were trying to get men off other ships over this issue and knocking other ships off. We conferred over that issue and we decided that we had to file this complaint to get this relief because this was seriously hurting the entire port.

Q. That's right.

A. And on Monday we took our complaint and we filed it and we came into Judge Body with the complaint, being yesterday, Monday, and today we are here in court in accordance with the Court's hearing that was set yesterday. I think that summarizes what I did.

Q. All right. Then as I understand it, the filing of this complaint was the only action that you took other than conferring with your principals?

[fol. 81] A. Well, I don't know if that's the only action that I took relating to this.

* * * * * * *

ALFRED CORRY, sworn.

Direct examination.

By Mr. Deasey:

Q. Mr. Corry, you are the executive director of the Philadelphia Marine Trade Association?

A. I am.

Q. And you were involved in this recent dispute regarding the setback provision of the contract?

A. Yes, sir.

[fol. 82] Q. Mr. Corry, did you speak with any members of the officers, any officers of Local 1291, with regard to the contract and specifically with regard to the provision of 10(6) of the contract and the arbitrator's award?

A. I did.

Q. With whom did you speak, Mr. Corry?

A. I spoke with Mr. Askew, Mr. Johnson and Mr. Devine.

The Court: The first name?

The Witness: Mr. Askew.

The Court: A-s-k-e-w?

The Witness: A-s-k-e-w.

By Mr. Deasey:

Q. And when did you speak with them?

A. Late Friday morning.

Q. And who is Mr. Askew?

A. President of Local 1291.

Q. Who is Mr. Devine?

A. Mr. Devine and Mr. Johnson are both business agents for Local 1291.

Q. Mr. Corry, what did Mr. Askew or Mr. Devine or Mister—who was the third one, Johnson?

A. Johnson.

Q. —tell you with regard—what did they say to you—with regard to the arbitrator's award?

[fol. 83] A. I first talked with Mr. Askew on the phone through a private line that we have with the Central Dispatching Office. It does not have any extensions, and when I talked with Mr. Askew, he had first said he had no knowledge of it, that he wasn't fully aware of it, that he wasn't involved, that it was the business agents, and I said to him that we are invoking the arbitrator's award, and Mr. Askew said I would have to talk to the business agents and that they were not going to—the arbitrator's award only applied to non-arrival of a ship.

So I said, "The arbitrator's award applies without qualification," and he says, "It does not," and they were not going to live by it.

With that he insisted that I talk with the business agents and, as I said, not having any other extensions, I have another phone number down there, and I immediately called back, and Mr. Askew got on the phone, Mr. Johnson and Mr. Devine—and Paul Johnson did most of the talking at that time—and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, "Yes, that's right," and that was the extent of my conversation with them.

Mr. Deasey: That's all, Your Honor.

The Court: When was this?

The Witness: On Friday morning, sir, late Friday morning.

By Mr. Deasey:

Q. July 30, 1965?

A. July 30.

[fol. 84] The Court: Cross-examination.

Cross examination.

By Mr. Adler:

Q. Mr. Corry, isn't it true that the tenor of their conversation was that the arbitration award did not apply to this case?

A. No, sir, they very definitely stated that they were not going to abide by the arbitrator's award with regard to the setback, and they further stated that the setback only applied for a non-arrival of a ship.

Q. Mr. Corry, let me rephrase the question: Didn't they say that they weren't going to abide by the arbitrator's award in this case?

A. They did not, sir.

Q. All right. They were talking about this case, weren't they? You were talking about this case?

A. I was talking about this case, certainly.

Q. And you were referring to a current work stoppage, weren't you?

A. I was.

Q. And that's what you were interested in?

A. I was.

Q. And when you spoke to them and mentioned the arbitrator's award you were relating the arbitrator's award to this current work stoppage?

A. That is so, but their reply to me was—

Q. Wait a minute.

A. Well, I want to qualify—

[fol. 85] Q. Just answer yes or no.

Mr. Deasey: Wait a minute.

A. I want to make my answer very clear.

Mr. Adler: May it please the Court—

Mr. Deasey: Just a moment.

Mr. Adler: —counsel had a full opportunity. I am entitled to my pattern of cross-examination.

The Court: Yes, but you are not entitled to cut off the witness.

Mr. Deasey: That's right.

The Court: You may answer the question.

The Witness: I was referring to this case, but at no time did the union say that this—that we are only speaking—that the arbitration award does not apply—only applies—or does not apply, rather, to this particular case.

By Mr. Adler:

Q. But you were talking about this particular case, weren't you?

A. Certainly. That's the only—that's the work stoppage that we had.

Q. Yes, and when you talked about the arbitrator's award, you were relating it to this case?

A. Yes.

Q. And when they were talking to you they were talking about this case; that is what was involved?

[fol. 86] Mr. Deasey: Objection, Your Honor. The witness has already testified as to what the testimony was from the union officials to himself. I believe he is entitled to state that and I don't believe there is a right here to mislead him.

The Court: This is cross-examination. You may proceed.

By Mr. Adler:

Q. As a matter of fact, there were two ships involved in this dispute; isn't that right?

A. There were two ships that were not working.

Q. That's right?

A. That's right.

Q. One of them had nothing to do with this arbitration award?

A. To the best of my knowledge, I didn't know what the dispute was, if there was any other dispute on the other ship other than the fact that there were ten gangs that were not working and because they would not abide by the setback—by the arbitration award.

Q. And you were talking about these two ships that were not working?

The Court: When you use the words "not working," sir, you mean they were not being unloaded?

The Witness: That's right, sir, loaded or unloaded, but I believe they were both discharging ships, if my memory serves me.

The Court: In other words, gangs were not aboard to do whatever work was to be done?

The Witness: Yes, sir.

[fol. 87] By Mr. Adler:

Q. And you were talking about these two ships?

A. That's the only problem that we had at the moment, yes.

Q. Is that right? As a matter of fact, the second ship didn't involve a setback at all, did it?

A. As I was—as far as I was concerned, it was the whole —the two ships weren't working because of the union's refusal to abide by the arbitration award on the setback.

Q. Well, isn't it a fact that one of the ships had a problem as to whether 6 and 7 gangs should have been working or 1, 2, 3, 4, and 5 gang should have been working?

A. I don't know anything about that, sir.

Q. You don't know anything about that?

A. No, sir.

Q. Well, the second ship was at the pier, wasn't it, ready to be operated, worked?

Mr. Deasey: Your Honor, I object to this. Mr. Corry has already testified that he doesn't know anything about this other operation.

The Court: Sustained.

By Mr. Adler:

Q. What did you call Mr. Askew about?

A. About the invoking of the arbitration award.

[fol. 88] Q. Well, didn't you call about a ship not working or two ships not working?

A. That ten gangs weren't working.

Q. Well, ten gangs don't work on one ship, do they?

A. Oh, there have been ships when they have. It is possible.

Q. Where there were ten gangs out on one ship?

A. Certainly.

Q. Were there ten gangs out on one ship?

A. Not in this particular case, no.

Q. So that you knew at the time that you were talking to him that one ship involved a setback and the other ship did not, didn't you?

Mr. Deasey: Your Honor, I object to that. He has already testified that he doesn't know what the problem was

with regard to the second ship. He has said he knows what the problem was with regord to the first ship I believe was the—

. . . . . .

[fol. 89] By Mr. Adler:

Q. Mr. Corry, you have said that you didn't know anything about the second dispute at all; is that right?

A. I knew of only one dispute.

Q. All right.

A. Ten gangs weren't working and it was because of the union's refusal to abide by the arbitration award, period.

Q. All right. Let's take that. You knew that ten gangs weren't working and because the union wasn't abiding by the arbitration award?

A. That's right, sir.

[fol. 90] Q. All right. Now, on what ship were the ten gangs not working?

A. I didn't say they were working on one ship. All I said, there was ten gangs that were not working.

Q. All right. Now, why were the ten gangs not working?

A. Because they wouldn't abide by the arbitrator's award.

Q. Well, what was the dispute?

A. The setback.

Q. Why weren't the men working?

A. The setback.

Q. All ten gangs were not working because of the setback?

A. All I know is that ten gangs weren't working and I know that the setback was being tried—trying to be invoked by the employer and the union refused to abide by it.

Q. All right. Now, what ship did it involve?

A. The "Skaugran"; I believe it was the "Skaugran."

Q. And how many gangs were set back for that vessel?

A. I don't know how many of the ten gangs. I don't recall whether it was four or five.

Q. What information did you have—

A. Five or six.

Q. What information did you have to call Mr. Askew?

A. Mr. Adler, I had this information—

Q. Just answer my question.

[fol. 91] A. I am going to answer your question. I had this information, that gangs were not working because the union refused to abide by the arbitrator's award.

Q. Well, who told you that?

A. Mr. Askew—who told me? The employer. The employer reported it first to me.

Q. What employer reported it?

A. Nacirema.

Q. Who?

A. Mr. Lynch.

Q. All right. What did Mr. Lynch say to you?

A. That the union refused to abide by the arbitrator's award.

Q. All right.

A. That they were not abiding—that they would not go for the setback.

Q. That was the only knowledge you had, so you called Mr. Askew; is that right?

A. That's right, sir.

Q. All right.

The Court: Can you close your examination in five minutes because the court will close at that time. Otherwise we will have to go on some time later this afternoon.

By Mr. Adler:

Q. Did Mr. Lynch tell you what ship was involved and how many gangs were involved?

[fol. 92] A. He told me there were two ships involved, the "Skaugran" and the "Nego Victoria," I believe.

Q. And did he tell you the setback was involved on both ships?

A. All I knew, there was a setback involved. He said a setback on the "Skaugran" was involved and I assumed that a setback also went for the "Nego Victoria," but there were ten gangs that were not working.

Q. So therefore when you were told by Mr. Lynch that a setback was involved and the two ships were involved, you assumed that it had to do with the arbitrator's award; is that right?

A. I didn't assume that. I knew that because I was told that.

Q. You mean Mr. Lynch told you that?

A. Mr. Lynch told me and it was confirmed by the union.

Q. That was his opinion?

Mr. Deasey: No.

A. No, it was not his opinion. He was told this by the union.

Mr. Adler: Well, I move to strike that, Your Honor. That's hearsay.

Mr. Deasey: You asked him.

The Court: That's right. Let's go on.

By Mr. Adler:

Q. You only knew what Mr. Lynch told you; is that right?

Mr. Deasey: Objection, Your Honor.

The Court: No objection. There is no jury here.

[fol. 93] He only knew because Mr. Adler went over what Mr. Lynch told him. Now he has got it.

By Mr. Adler:

Q. All right. You then called Mr. Askew?

A. Correct.

Q. And you told him and discussed the arbitrator's award with him without knowing any of the actual facts of the case; is that correct?

Mr. Deasey: Objection.

The Court: Overruled.

A. I did know that the ship was knocked off because of the refusal of the union to invoke the arbitration award, arbitrator's award. I knew that. The agent reported to me the ship was knocked off; the stevedore reported to me the ship was knocked off. Now, what did you want me to do, go up there myself and see for myself whether or not the ship was knocked off?

By Mr. Adler:

Q. Mr. Corry, didn't you just say that the only thing you knew about the incident was that ten gangs were not working on two ships and that you were told it was arising out of the arbitrator's award?

A. I said that I knew there were ten gangs involved and I further said that I was advised by the operator of the ship that the reason for the ten gangs not working was because of the refusal of the union to abide by the arbitrator's award on the setback.

Q. All right.

[fol. 94] A. That is what I said.

Q. But you didn't know any of the actual facts or circumstances under which the men were not working, did you?

A. I just stated that I didn't.

Q. Other than the fact that they weren't working?

A. I just stated that I didn't.

Mr. Deasey: Objection, Your Honor.

The Court: Overruled. The record is complete on the basis of his knowledge. He has told us the basis of his knowledge.

By Mr. Adler:

Q. And when you called Mr. Askew and you spoke to Mr. Johnson and Mr. Devine, you spoke to them based upon this limited knowledge which you had; is that correct?

A. It was not limited knowledge because it was confirmed by the union officials that the ships were not working.

Mr. Adler: I have no further questions.

The Court: Anything else?

Mr. Deasey: No further question, Your Honor, and we have no further evidence to present.

The Court: Now, anything else from your side today?

Mr. Deasey: Not from our side.

[fol. 95] The Court: Mr. Adler, do you want to present anything today? If you do, you can come back this afternoon at the end of my other hearings. When they are going to end, I don't know. Maybe they will end at 2:15; maybe they will end at 2:30. I don't know what the situation is.

Mr. Adler: I would like to take advantage of Your Honor's kindness in saying we could come back on another day. I am leaving on vacation on Thursday. I would also like leave at this time to file a written motion to dismiss which has to be—

Mr. Deasey: That has been admitted.

Mr. Adler: No, no, this is after the end of the plaintiff's testimony, if I could have leave to file that this afternoon.

The Court: You may file it. It will be refused.

Do you want to present any testimony this afternoon?

Mr. Adler: If I may, I would like to review and have an opportunity to present testimony on another day in view of the lack of emergency, if I may, Your Honor.

The Court: I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.

So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued.

Mr. Deasey: That will be fine, Your Honor.

The Court: If Mr. Adler will file a motion to dismiss, it will be refused. What else do you want?

[fol. 96] Mr. Adler: And I understand I have leave—

The Court: To present testimony.

Mr. Adler: —to present testimony.

The Court: If you want to. If you don't want to—

Mr. Adler: Then I will notify the Court in writing.

The Court: On that basis, as stated by your partner, Mr. Weiner, the question is moot.

Mr. Adler: Well, the only testimony I would present, Your Honor, would be testimony in contradiction to the testimony presented by the plaintiff.

Mr. Weiner: If Your Honor please, if I may, I don't intend to get into the testimony phase of it, but you will recall at the beginning we file a motion to dismiss on jurisdictional grounds.

The Court: I refuse that.

Mr. Weiner: May we have leave to file briefs with Your Honor?

The Court: You may do that.

Mr. Weiner: Would Your Honor like to have them in a certain time, ten days, two weeks?

The Court: Any time you want to do it.

Mr. Weiner: All right, sir.

The Court: After you file your brief—

Mr. Deasey: We will have an opportunity to reply?

[fol. 97] The Court: Any time, if you want to do it, any time, ten days. If you are going on vacation—

Mr. Adler: I think it should be done in ten days.

The Court: All right.

Mr. Adler: Jurisdiction—

The Court: I will give you ten days, and ten days thereafter to file your reply.

Mr. Weiner: On jurisdiction.

Mr. Deasey: Thank you, Your Honor.

(Adjourned at 12:30 p.m.)

[fol. 98]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

Philadelphia, Pa.

Hearing of September 13, 1965

Before Hon. Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan, by Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry, by Abraham E. Freedman, Esq., for defendant.

The Court: As the result of a telephone call from Mr. Scanlan in regard to case of 38647, Philadelphia Marine Trade Association vs. International Longshoremen's Association, Local 1291, we are here to hear whatever is to go on this afternoon.

[fol. 99] It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.

Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other facts have arisen, so, Mr. Scanlan, we will give you the oar.

STATEMENT BY MR. SCANLAN ON BEHALF OF PLAINTIFF

Mr. Scanlan: Very good, Your Honor.

May it please the Court, as Your Honor has stated, when we were before you in this matter before, I believe it was on August 3, Your Honor kept the case open so that we could report to Your Honor if any situations developed similar to those which we had before you at that time.

As Your Honor will recall, we were before you last time in connection with an arbitrator's award which was handed down which specifically provided that the employers, members of the Philadelphia Marine Trade Association, had the right to set back gangs without qualification, the issue that was before the Arbitrator at that time.

The Union took the position that the contract only referred to setting back gangs for the non-arrival of a vessel in port.

This matter was argued fully before the Arbitrator in which it was agreed that the award would be final and binding, and the award provides that the gangs can be set back without qualifications.

[fol. 100] Now, this morning, Your Honor, I was informed that there were four employers of the Philadelphia Marine Trade Association who had exercised their rights under the contract and the Arbitrator's award to set back gangs for a 1:00 o'clock start this afternoon. These employers were Murphy Cook & Company, which had three gangs and had set them back for a 1:00 o'clock start, Luckenbach Steamship Company which had set back six gangs, Independent Pier Company, which had set back two gangs, and Northern Metals Company which had set back four gangs.

These gangs were set back in accordance with the contract and the Arbitrator's award and, as Your Honor will recall from the last hearing, there is a central hiring point now which we did not have before in which the orders are given to the dispatchers at the central hiring point and the foreman, of course, is notified. Now, the Union has representatives at the central hiring point the same as the employers

and Your Honor will recall at the last hearing there was testimony that the president of the local involved, Local 1291, took the position that he was not going to abide by the Arbitrator's award and that as far as he was concerned, the setback rights still applied only to the non-arrival of vessels in port.

Now, this morning when these gangs were set back, Mr. Askew as I understand it took the mierophone which is at the central dispatching office and notified—

The Court: Who is Mr. Askew?

Mr. Scanlan: Mr. Askew is the president of Local 1291, of the International Longshoremen's Association, the defendant in this action.

[fol. 101] And, as I was mentioning, Your Honor, Mr. Askew took the microphone and announced that the men who were set back were not to report at 1:00 o'clock but they were to report tomorrow morning, and in addition to the when who were set back, I understand that there were gangs that were actually cancelled as the employers have a right to do, cancel outright for the day, and Mr. Askew announced that those gangs should report for work at 1:00 o'clock.

Now, this created a real serious problem because there were four vessels involved and we called Your Honor to bring this to Your Honor in accordance with our understanding.

I can state to Your Honor that I have been advised at the present time that at 1:00 o'clock today the gangs for Luckenbach reported for work and also the gangs for Murphy Cook & Company. There was one gang that reported for Independent Pier Company that was complete, another gang that was not complete, and they were attempting to fill out that gang. With respect to the Northern Metals Company where there were four gangs that were set back I have been advised that only half of the men showed up and they refused to work this afternoon unless they were paid four hours for this morning which, of course, they are not entitled to under the setback rights.

Your Honor, even if all the gangs for all of the employers had reported for work at 1:00 o'clock we would still want to continue with this hearing to have an order handed down to make it perfectly clear to the defendant that it is required to comply with the Arbitrator's award because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's award, and we cannot [fol. 101a] continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work.

In this case, fortunately, most of the men have returned to work, but we still have one company, a transit ship, which should be working at 1:00 o'clock, which isn't because of the position which was taken by the defendant, and therefore we want to present our testimony so that after Your Honor has heard it you will have an opportunity to hand down an order which we prayed for originally specifically enforcing the Arbitrator's award in this case.

The Court: Are you ready to proceed?

Mr. Scanlan: Yes, I am ready to proceed, Your Honor.

The Court: Mr. Freedman.

STATEMENT BY MR. FREEDMAN ON BEHALF OF DEFENDANT

Mr. Freedman: May it please the Court, I first want to object to the hearing—

The Court: At the last hearing of this matter Mr. Joseph Weiner of Mr. Freedman's firm appeared and that is Mr. Abraham Freedman?

Mr. Freedman: Yes, sir. Thank you, Your Honor.

I first want to object to the holding of this hearing because I think that there is a complete lack of due process involved to start with.

I received a telephone call about, oh, quarter to one, possibly, between 12:30 and quarter to 1:00, as closely as I can recall, from Mr. Scanlan who just simply said to me that there was a dispute on the waterfront that involved the same issue that was involved in the matter pending before the previous arbitrator and that they had attempted to set

back and he said a couple more things along those lines, and that he had been in touch with Your Honor, and Your Honor had said that you would see us at 2:00 o'clock.

[fol. 102] I was not advised, nor was any suggestion made, that there was going to be a hearing, and I don't see how there could be a hearing on a matter of this sort now because, first of all, I haven't even had time to discuss the matter with my client, the issues have not been crystallized to the point where the rules required them to be crystallized, namely, there has got to be a complaint with allegations which are clear enough so that we can answer and deny or admit as we consider appropriate, and I need not suggest to Your Honor what the other requirements of due process are; I am sure that Your Honor is well aware of them.

There has been no time, for example, for me to even prepare for this situation. Mr. Scanlan says that he does not come in for an injunction; he is only coming in for specific performance. Under these circumstances, since he is not asking for an injunction, there is all the more reason for this matter to have been done in the regular fashion which is required by the rules, namely, the filing of a complaint with the right to me to answer.

I understand that Mr. Scanlan somehow is attempting to tie this incident into the previous incident which came before Your Honor, I believe, on the last day of July, if I recall correctly, and I don't believe that it can be done, but assuming that it can, I still would have a right to interview my client, to find out what they knew about it, and I certainly would have a right to know from Mr. Scanlan on paper, as is required by the rules, just what it is that he is alleging now. Particularly, I notice he is not asking for an injunction, so he says. He simply says he wants specific performance.

[fol. 103] Frankly, I think that the label may be different, but the relief is exactly the same. It is identical and I don't care what we call it. The point is what he wants here is injunctive relief, whether it is in the way of specific per-

formance or whether it is in some other fashion with a different kind of a label on it, so that I would like to make it very clear at the outset that I believe that this hearing should not go forward for that reason alone, namely, we want to see just what it is that Mr. Scanlan is alleging, even if he is alleging something in addition, even if this be a contination of some other conduct which he alleges somehow to be in violation of the agreement. We are still entitled to a complaint or a supplemental complaint in which he sets forth these additional matters with the right to answer. We are entitled to be confronted with these matters in the complaint as well as with evidence to be presented in court, and I think that what he wants to do now is present the evidence before he even alleges it in any formal document.

So that I would like to go on record, Your Honor, as objecting to the holding of this hearing in any fashion whatsoever.

No. 2, I would point out to Your Honor that under the very contract which Mr. Scanlan claims here now, there is a requirement—I don't have it in front of me, Your Honor; I didn't even bring the file with me—and, as I said, I talked to my client for just a moment or two without having any opportunity before coming up here to find out what the facts were, but the contract itself requires that wherever there is a dispute, wherever there is a dispute, it has got to be submitted—I think the clause is 28; I am not sure, but I think that's the clause in the agreemment—it has got to be [fol. 104] submitted to grievance and arbitration. Every dispute is a different case all in itself. The adjudication by an arbitrator of any one dispute does not resolve any dispute and is not a precedent for any other dispute.

I may say to Your Honor that the contract itself requires that kind of a construction and, in point of fact, this is the manner in which this contract has been customarily exercised since as far back as I remember, and that's way back.

I may say also, if I may cite a specific illustration to Your Honor of how this contract and how these disputes have

been handled, in the prior case where Father Comey some years back was the arbitrator, he decided one issue four times, that is, the same issue four times. The parties would bring it up each time, the same issue, and the arbitrator at that time decided the issue on the same basis, but each time there was a different arbitration. Each dispute went through the grievance and arbitration machinery and each one was decided. The fifth time it came up the arbitrator upon his last examination of it finally decided that he had been wrong the first four times and reversed himself, so that actually it is quite clear now from past practice and from the agreement itself that whatever issue, whatever they may have done with respect to one particular dispute, the award as to that dispute relates only to that dispute and is not controlling so far as any future dispute is concerned. Any future dispute which arises has got to go through the same channels. The arbitrator may decide that the same conclusion which he reached before should be reached there too, but it is for him to decide, and if either party has any grievance with that, if they feel they can go to court from the arbitrator's decision, then they can go to court thereafter, but not before, and that's the situation we have got here.

. . . . . .

[fol. 105] Mr. Freedman: So that on that ground alone, Your Honor, on the ground that here they did not go through the remedies required by the contract, this Court is completely deprived of jurisdiction, even if it otherwise had jurisdiction, and I submit, as I will argue in a moment, that it did not and it does not, but even if Your Honor did have jurisdiction, you don't until the requirements of the contract have been satisfied, and here they made no pretense, and I think the evidence will show that they made no pretense, of even going through the motions required by Clause 28 or whatever it is, or whatever the number is, which relates to the grievance and arbitration machinery, so that on that ground alone this Court lacks jurisdiction to proceed with this matter.

No. 3, on the pure legal ground, even assuming that there was an arbitration here, that there was a grievance and an arbitration as required by the contract, and that the arbitrator handled it in a proper fashion and rendered a decision in this case, on these facts this Court would be completely powerless to enter an injunction under the circumstances because of the prohibition under the Norris-LaGuardia Act.

[fol. 106] I cite to Your Honor the case of Sinclair vs. Atkinson decided by the Supreme Court of the United States very recently, relatively recently, which I respectfully submit to Your Honor is on all fours with this one.

I know that we have filed briefs with Your Honor in connection with the last matter that came up before you on July 30—I think that was the date—

The Court: The 3rd of August.

Mr. Freedman: The 30th?

The Court: The 3rd of August.

Mr. Freedman: The 3rd of August, yes, and I understand from Your Honor that you considered the matter moot at that time and therefore didn't consider those briefs but—

The Court: Then men had gone back to work and at the time the briefs came in there was no point in making a decision; the matter was moot.

Mr. Freedman: I would respectfully suggest when Your Honor reads those briefs, reads our brief, but more importantly, reads the decision of the Supreme Court of the United States in the Sinclair case, you will conclude that there is absolutely no jurisdiction in this type of situation. I think that brief is in Your Honor's file and it is laid out for Your Honor there.

Now, Mr. Scanlan makes the point, and he cites a number of other cases, saying that the Court does have jurisdiction and so on, but when Your Honor reads the Sinclair case, you will see that all of these cases that Mr. Scanlan refers to are considered by the Supreme Court of the United States and distinguished.

[fol. 107] For example, in the Steel case and some of the others—there was the Steel trilogy and there were a couple of others—they were the cases where the petitions in the other courts were to go to arbitration. The Supreme Court held in prior cases—the Lincoln Mills case, for example—that you could require a union to go to arbitration, the court could enter an award requiring a union to go to arbitration, but, said the court, in the Sinclair case, that is not to say that you can enter injunctive relief to compel adherence to the award. That's something different because you cannot enter an injunction under the circumstances simply because of the Norris-LaGuardia Act which prohibits injunction wherever there is a labor dispute involved.

Now, I don't know that I need labor that any further, Your Honor. I think that Your Honor should read that case and when Your Honor reads it over I feel confident that you will simply dismiss this complaint in its entirety because there just isn't any jurisdiction.

So these grounds, upon these grounds, I respectfully submit that you dismiss these proceedings.

I would also suggest since the case upon which this proceeding is premised, namely, the one that was decided, rather, that was held before Your Honor on August 3, and which as Your Honor indicated became moot at that time, I would respectfully request that your Honor, if there is any question about it, make a decision one way or the other so that we could appeal in that decision, in that case, so we would at least have some basis to go to the Court of Appeals.

[fol. 108] The Court: In my opinion, we have jurisdiction and I will continue jurisdiction of this case. However, in view of the absence of your client this afternoon, I will continue the matter until 2:00 o'clock tomorrow afternoon.

Mr. Freedman: Very well, sir.

The Court: Mr. Scanlan, do you have anything else to say? I didn't give you an opportunity to say anything.

Mr. Scanlan: Well, no, Your Honor. I disagree with some of the things that Mr. Freedman espoused.

The Court: Yes, I assume you did, but I decided for other reasons—so far as entertaining jurisdiction, I disagree with Mr. Freedman on that—but some of the other matters at this time are still to be decided by me, you know. Now, then, whether or not I have a right to issue what you ask is, of course, another matter, but I have jurisdiction to hear the matter. That's all I am determining this afternoon, and then we will have the hearing tomorrow morning, if you choose to amend your original complaint and have it in shape so that Mr. Freedman knows what you are going to say.

Mr. Scanlan: Your Honor, he knows because—

The Court: So if you want to—

Mr. Freedman: I don't know. I don't know.

The Court: You heard him say it this afternoon.

Mr. Freedman: I know, but that's not the way it is required by the Court. I want to know dates, I want to know times, I want to know specifics, sir. He says there [fol. 109] was an attempt to set back. That doesn't make —I want to know who was involved, where it occurred, the name of the vessel and everything else.

The Court: The choice is with you, Mr. Scanlan, what you choose to do.

Mr. Scanlon: Yes, Your Honor. I say this for you very briefly on the record, we did file our complaint. Mr. Freedman knew what it was all about. The only reason the hearing did not continue was because the men had gone back to work, and it looked as if perhaps this thing might not come up again.

There was an admission of record that the union was bound by the Arbitrator's award.

The Court: Well, it would appear from what you said that better than 75 per cent of the men went back to work.

Mr. Scanlan: Yes, but what we want, Your Honor, is to have this decided once and for all, and we don't believe that frankly—I don't believe—it is necessary to file another complaint. Mr. Freedman knows what we are seeking.

The Court: Maybe you want to file another complaint in view of what is involved today. That's entirely up to you. If Mr. Freedman's point is good your case would fall on that alone. It would seem to me his point on that may be good, off the record—not, "off the record"; on the record—it would seem to be good because you now have circumstances of September 13 concerning four different companies, and I assume therefore four different vessels, is that right, four different ships?

[fol. 110] Mr. Scanlan: Yes, there were four stevedoring companies.

The Court: In other words, four different stevedoring firms, and the stevedoring firms have three gangs in one and two in another and one in another and so forth so—

Mr. Scanlan: Your Honor, as far as that is concerned, I did state what the basis was, and I have no objection at all to amending the complaint to add these specific—

The Court: I think it should be done. I think it would be helpful to the Court.

Mr. Scanlan: Yes, I would be happy to do that so there won't be any objection by Mr. Freedman on that.

The Court: Well, he makes an objection anyway, but maybe the objection wouldn't have mattered.

Mr. Freedman: Your Honor, I am not going to just object, and I never have. I don't object captiously and I don't object without good reason. If he is going to file an amended complaint, I have a right to answer. The rules give me certain rights as to when and how to answer. Since he himself says this is not an injunction and there is no suggestion here for the specific kind of relief which goes along with injunction cases, then the regular requirements of the rules should be adhered to.

Mr. Scanlan: Well, now, Your Honor, I disagree with that and that's one reason why initially I stated I saw no reason to file an amended complaint because we do want to proceed with this hearing tomorrow afternoon.
[fol. 111] I gave Mr. Freedman the outline of what we intend to prove.

The Court: Well, now, secondly, gentlemen, I must tell you that there is no guarantee I can go on at 2:00 o'clock because the argument list comes first, but if the argument list folds like it has a number of times, we have a number of situations where parties did not file briefs, and if the other side moves for a judgment or whatever the matter is, it shall be entered and it may well end up with two or three arguments.

Mr. Scanlan: One other point I would like to make, Your Honor, and this is very important, and the fact that it is an action for specific performance doesn't in any way mitigate from the importance and the need to have the order entered.

The Court: Well, the way I view this situation, Mr. Scanlan, is anything and everything that comes before the trial court is a matter of importance.

Mr. Freedman: I would say this: At least I find myself in agreement on one ground with Mr. Scanlan. I think it is not only important; I think it is terribly important, not only the substance but the procedure which is involved here, everything that we are dealing with here. We are dealing with human rights as well as property rights and each has got its place and each must be respected.

The Court: Gentlemen, we will continue the matter until tomorrow at 2:00. There is no guarantee that you are going to be heard at 2:00, but be ready.

Mr. Freedman: If it looks as though we won't get reached or Your Honor won't have time for us, may we expect a call from Your Honor so that we can possibly do some other chores?

[fol. 112] The Court: Do something else? Well, about 12:00 o'clock we will know better about 2:00 o'clock. I have no idea what the situation is because we won't know until the list is called at 10:00 and then we won't know because what we do, we will list them in the order in which they appear, and sometimes counsel get out in the hallway and settle the case before the case comes up, you know that, time and again.

Mr. Freedman: That's right.

May I make one other request, Your Honor? Since I have indicated the Sinclair case is so precisely on point and so important and so dispositive, may I request that Your Honor read that case thoroughly overnight? Thank you, sir.

The Court: Bedtime story.

Mr. Freedman: Very good, sir.

The Court: All right, gentlemen.

Mr. Scanlan: All right, thank you very much, Your Honor.

(Concluded at 3:15 P. M.)

[fol. 113]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

Hearing of September 15, 1965

Philadelphia, Pa.

Before Hon. Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan by Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry by Abraham E. Freedman, Esq., for defendant.

[fol. 114] The Court: Gentlemen.

Mr. Scanlan: Mr. Corry.

Mr. Freedman: If the Court please, may I protect my record at the outset? I would object to any testimony or any proceedings of any nature whatsoever at this point because there is nothing before Your Honor. There is no pleading, there is no amended complaint nor any new complaint. I don't think an amended complaint would do it, but there is nothing before Your Honor, and I respectfully suggest that Your Honor not only doesn't have any jurisdiction now, but there is nothing that Your Honor could hear now, and in fairness to my client I think I should be apprised in formal fashion as the rules require just what it is that Mr. Scanlan is alleging so that I could answer and come into court properly prepared, sir.

The Court: Mr. Scanlan.

Mr. Scanlan: If Your Honor please, there is a complaint before the Court. The complaint was filed in conjunction with the matter in which we originally invoked the Court's jurisdiction. We have not changed our cause of action. We are still seeking an order enforcing the Arbitrator's award.

Mr. Freedman was served with a copy of the complaint. He knows what the allegations of that complaint are, and under the Federal Rules, he is not entitled to allegations of all the facts. The complaint merely has to set forth a cause of action, and the complaint which Mr. Freedman has certainly as far as we are concerned sets forth our cause of action.

As far as the subsequent events are concerned, this is a continued hearing which Your Honor continued specially in the event there were incidents which occurred after the [fol. 115] last hearing on August 3, and these are the incidents which we are now bringing to Your Honor's attention so that Your Honor can rule on our prayer which is in our complaint which is an order for specific performance.

Mr. Freedman at the last hearing asked for an amended complaint. An amended complaint would not be proper in this case because there are no facts which we left out of our original complaint, and an amended complaint would only be for the purpose of amending, for facts that had occurred prior to the time of the filing of the complaint. This is not the situation here. We are before Your Honor in accordance with the agreement at the last hearing, that if there were subsequent events which occurred, that we should bring it to Your Honor's attention so Your Honor could rule on the prayer in our complaint.

So I say to Your Honor there is a complaint and we are now before Your Honor with the subsequent events which I outlined on the record and which were actually disclosed to Mr. Freedman in chambers before we appeared in the courtroom, and he knows what these events

are, and I don't think Mr. Freedman is entitled to any more than that at this time.

Mr. Freedman: I want to reiterate my objection, Your Honor. I don't know what the events are.

Mr. Scanlan talks about certain subsequent events and incidents, and I am going to object to anything which is not pleaded. Certainly there is no complaint in this case, Your Honor. This is an entirely brand new dispute. Whatever might have gone before is one thing, but even if it were, even if the other complaint should conceivably be applicable here, it should be amended. I am not saying [fol. 116] what it should be. I didn't ask for an amended complaint before. It was suggested to Mr. Scanlan that he amend his complaint. I think Your Honor suggested it to him, not me.

I say that if he has got a new cause of action, or if he has got any cause of action here based on these incidents about which he wants to have testimony now, he should put it in the form of a pleading which is required by the rules.

I therefore think that anything that he wants to have testimony about now concerning any new incidents, any new events, certainly is not relevant and not admissible in this proceeding. I say that there is no basis for this proceeding without any new pleading.

Mr. Scanlan: Your Honor, just very briefly in reply—

The Court: We will proceed. I understand the situation. We will proceed.

Mr. Scanlan: Very good, Your Honor.

Mr. Corry.

Mr. Freedman: Did I understand Your Honor overruled my objections, sir?

The Court: The objection is overruled. We will proceed with the hearing.

ALFRED CORRY, sworn.

[fol. 117] Direct examination.

By Mr. Scanlan:

Q. Mr. Corry, you have previously testified in this action, have you not?

A. Yes, I have.

Mr. Freedman: I object, Your Honor, when he says, "in this action." This is a brand new action. I am going to object, sir.

The Court: You have noted that general objection. You have a general exception on those lines.

Mr. Freedman: Thank you, sir.

By Mr. Scanlan:

Q. Now, Mr. Corry, will you please advise His Honor as to what happened on September 13, 1965 with respect to gangs which were set back by members of the PMTA?

A. On Monday morning—

Mr. Freedman: Objection, Your Honor, not pleaded, nothing before the Court on it, sir.

The Court: Overruled.

A. On Monday morning, between 8:30 A.M. and 8:45 A.M.—

Mr. Freedman: What date is this, now, sir? What date was that?

The Witness: Beg—on Monday morning, September 13.

Mr. Freedman: September what?

[fol. 118] The Witness: 13th—between the hours of 8:30 A.M. and 8:45 A.M., Mr. Monroe of Murphy-Cook Company arrived into my office and advised me that he set back gangs—

Mr. Freedman: I am going to object, Your Honor; hearsay.

The Court: Are you going to insist on that?

Mr. Freedman: Sir?

The Court: On all the rules of evidence before me?

Mr. Freedman: I didn't quite grasp what you said.

The Court: Are you going to insist on all the rules of evidence before me, we have to bring in all these matters?

Mr. Freedman: Absolutely. I am not going to waive anything. I don't think I am being technical.

The Court: You are being very technical. Just face the facts.

Mr. Freedman: I am doing what I think the interests of justice requires. I think if I would do nothing I wouldn't be serving my client.

The Court: Overruled.

By Mr. Scanlan:

Q. Please continue, Mr. Corry.

The Court: Will you please sit down, Mr. Freedman.

Mr. Freedman: Yes, sir. I find a little difficulty hearing him unless he keeps his voice up.

[fol. 119] A. Between the hours of 8:30 A.M. and 8:40 A.M., Mr. Monroe of Murphy-Cook Company came into my office and advised me that gangs that he had ordered on Saturday for an 8:00 A.M. start on Monday morning were set back to 1:00 P.M. on Monday.

He further advised me that Mr. Askew, the President of Local 1291, made an announcement over the loudspeaker system that is in the central dispatching office to the effect that all gangs who were set back to 1:00 P.M. were not to report at 1:00 P.M. but were to report at 8:00 A.M. on Tuesday.

While Mr. Monroe was in my office I picked up a direct line that we have to the central dispatching office and I spoke with Mr. Evans, our chief dispatcher. I inquired of Mr. Evans of what—I advised him of what I was told and asked him if he knew anything about it. Mr. Evans

confirmed that this was so, and not only did this apply to Murphy-Cook, but there were three other companies involved, namely—

Mr. Freedman: If the Court please, my objection goes to this entire line and I assume it covers everything that the witness is saying, sir.

The Court: That's hearsay.

A. Namely, in addition to Murphy-Cook Company, there was Nacirema Operating—not Nacirema; I am sorry—Northern Metals Company, Independent Pier Company and Luckenbach Steamship Company. I then—

By Mr. Scanlan:

Q. Now, sir—

A. —called—

[fol. 120] Q. I beg your pardon.

A. Yes.

Q. Are you finished?

A. You want me to continue on as to what happened?

Q. Well, yes. May I just interrupt at this point, Mr. Corry—

Mr. Freedman: I think the witness ought to be permitted to finish his answer to the question before he is interrupted, sir, if it is going to be relevant. I don't think that counsel ought to interrupt him. I think we are entitled to have his full answer.

Mr. Scanlan: Your Honor, I have no objections if Mr. Corry would like to continue.

By Mr. Scanlan:

Q. Please continue, Mr. Corry.

A. All right, sir.

Mr. Freedman: Subject to my objection, of course.

A. I then picked up the phone and I called Local 1291's office and spoke with Mr. Askew, and I asked Mr. Askew

if he had made such an announcement over the loudspeaking system that the gangs ordered for 8:00 A.M. and were set back for 1:00 P.M. were not to report until Tuesday morning. Mr. Askew confirmed that he made such a statement.

By Mr. Scanlan:

Q. Now, Mr. Corry, you identified Mr. Monroe of Murphy-Cook & Company. Is Murphy-Cook & Company a member of the plaintiff, PMTA?

[fol. 121] A. Yes, sir, they are.

Q. Now, how many gangs had they set back on Monday, September 13?

A. Three gangs, I believe.

Q. And do you know how many gangs were set back by the other companies which you have mentioned?

A. Yes, I believe Independent Pier set back two gangs; Luckenbach set back six gangs—

Mr. Freedman: Luckenbach, how many?

The Witness: Six gangs.

Mr. Freedman: Six?

The Witness: Yes, and Northern Metals, I believe it was four gangs.

Mr. Freedman: Four?

The Witness: Four gangs, yes, sir.

The Court: Who was the first two gangs?

The Witness: Independent Pier, sir.

The Court: Northern Metals was the last one you mentioned?

The Witness: Yes, sir.

The Court: That would be two, six and four, twelve gangs all together?

The Witness: And three gangs from Murphy-Cook.

The Court: Three gangs, Murphy-Cook?

The Witness: Yes.

[fol. 122] Mr. Scanlan: That's all I have, Your Honor.

Cross-examine.

Mr. Freedman: If the Court please, I am not going to cross-examine this witness because I consider that if I do it may be participating in a hearing and reflecting some dignity to testimony which I do not believe is relevant, and therefore I am going to refrain from cross-examination, sir.

The Court: That choice is with you, sir.

Mr. Freedman: Sir?

The Court: You will have to make that choice.

Mr. Freedman: Sir?

The Court: If that's your choice, all right.

Mr. Freedman: That's my choice with this witness, sir.

Mr. Scanlan: That's all, Mr. Corry.

Mr. Scanlan: Mr. Evans.

JOSEPH J. EVANS, sworn.

Direct examination.

By Mr. Scanlan:

Q. Now, Mr. Evans, by whom are you—

Mr. Freedman: I have the same objection to this witness, too, Your Honor.

[fol. 123] The Court: You have an objection to this witness?

Mr. Freedman: Yes, Your Honor.

The Court: Make it.

Mr. Freedman: I object to this witness also for the reason that it is not indicated that he is going to testify to anything that was involved in the original proceeding, and I don't believe there is anything before Your Honor now that he can testify about.

The Court: Overruled.

Mr. Freedman: I would ask for an offer of proof although I think Mr. Scanlan has made it clear, sir, what

he wants, and I assume that this is what he is going to prove or attempt to prove with this witness.

The Court: Proceed.

Mr. Freedman: It would seem to me if he is going to prove, he proved what happened subsequent to the events set out in the last complaint.

The Court: Proceed, Mr. Scanlan.

By Mr. Scanlan:

Q. Mr. Evans, by whom are you employed?

A. By the Philadelphia Marine Trade Association.

Q. And what is your position with the Philadelphia Marine Trade Association?

A. I am the chief dispatcher at the Joint Dispatch Committee Center.

[fol. 124] Q. Where is that dispatching center located?

A. Beneath the Walt Whitman Bridge.

Q. Now, Mr. Evans, were you present at the dispatching center on Monday, September 13?

A. Yes, I was.

Q. What time did you arrive there?

A. At approximately 6:45.

Mr. Freedman: Would you keep your voice up, please?

The Witness: At approximately 6:45.

The Court: Will you pull your chair forward a bit and talk in the general direction of Mr. Freedman.

By Mr. Scanlan:

Q. Now, Mr. Evans, did you see Mr. Askew at the central dispatching office that morning?

A. Yes, I did.

Q. What time did you first see him?

A. At aproximately 7:40.

Q. Now, while you were there did you hear Mr. Askew make any announcement on the public address system?

A. Yes, sir, I did.

Q. Will you please tell His Honor what you heard Mr. Askew say.

[fol. 125] A. Mr. Askew announced that the gangs that were set back to 1:00 o'clock on that date were to report the following day at 8:00 A.M. The gangs that were cancelled out that morning were to report at 1:00 o'clock that same day.

Mr. Scanlan: Cross-examine.

Mr. Freedman: First, I would like to move to strike the testimony of this witness as I do the testimony of Mr. Corry, and for the same reason I would not cross-examine this witness.

The Court: Overruled.

No cross.

Mr. Scanlan: That's all, Mr. Evans.

The Court: I would ask the court stenographer to please repeat for me the answer to the last question that Mr. Evans gave, "Mr. Askew said"—

(The answer was read by the reporter.)

Mr. Scanlan: Now, if Your Honor please, that completes our testimony and now we would like Your Honor to consider the prayer of our complaint.

This testimony establishes that after the last hearing Mr. Askew has announced that the gangs that were set back in accordance with the Arbitrator's award, which is a matter of record in this case—it was appended to our complaint and it was admitted at the time of the last hearing—and under that award the employers have the right to set back their gangs, and the gangs are to report at 1:00 o'clock in accordance with the award, and in accordance with the contract, and this clearly shows, this testimony shows, that Mr. Askew, who is the President of the defendant Local [fol. 126] here, has taken it upon himself to announce that gangs that had been hired and had been set back and were required to report for work at 1:00 o'clock should not report and that they should report the next day, which

is evidence that the defendant Local does not intend to abide by the Arbitrator's award in this case.

The Court: What happened in response to the announcement? We have no testimony in regard to that.

Mr. Scanlan: We don't have any, Your Honor. I don't consider it necessary.

I don't mind advising Your Honor as a matter of record that three of the companies who had set back their gangs, these gangs actually reported contrary to Mr. Askew's instructions. The other company, the gangs—not all the gangs reported; half of the gangs reported—and as I understand it, Your Honor, they were unable to fill out the gangs that were involved that afternoon, so that is the situation as a matter of record, but I don't consider it important enough at this time to present it as a matter of testimony.

Mr. Freedman: I object to Mr. Scanlan's statement. I don't believe that he is in a position to give testimony. I don't believe he should, and I move that his statements be stricken from the record. I don't think it is an answer and I don't think it is proper evidence.

The Court: I don't think it is proper evidence, either. I think we should have some evidence as to what happened as a result of that, Mr. Scanlan.

Mr. Scanlan: Very good, Your Honor. Then I shall recall Mr. Corry.

Mr. Corry.

[fol. 127] ALFRED CORRY, recalled.

Direct examination (continued).

By Mr. Scanlan:

Q. Mr. Corry, with respect to the—

The Court: You have been sworn, Mr. Corry, it is not necessary for you to be sworn again.

The Witness: Thank you, sir.

By Mr. Scanlan:

Q. Mr. Corry, will you please explain to His Honor what happened on the afternoon of September 13 with respect to the companies that you have mentioned whose gangs were set back?

A. Between 1:00 P.M. and 1:15 P.M.—and I am not saying that this is the chronological order that they called in—but that I talked to representative—to a representative of Independent Pier, Murphy-Cook, Luckenbach and Northern Metals Company respectively, maybe not necessarily in that order, and three of the companies, Independent Pier, Murphy-Cook and Luckenbach, had reported that their gangs had showed up and was—and checked in to go to work. Northern Metals Company reported that only half of the men had showed up and they didn't have enough men to go to work and the men that did show up had made a claim that they weren't going to go to work unless they were paid four hours for the morning period. However, the gang—the men that did show up left the premises and that ship laid idle that afternoon.

[fol. 128] Q. Now, Mr. Corry—

Mr. Freedman: When you say, "showed up," are you talking about that same day, September 13?

The Witness: That's right, sir.

Mr. Freedman: All right.

The Court: Well, I didn't quite understand that. Mr. Freedman has asked a question now and I am still more confused.

Mr. Freedman: Sir?

The Court: Your question still more confuses me. I didn't understand Mr. Corry's answer.

On the last ship, on Northern Metals?

The Witness: Yes, half the gangs showed up; half of the men showed up.

The Court: Half the men showed up?

The Witness: And the other half didn't show at all.

The Court: I see.

The Witness: Did not show at all, I believe, unless I misunderstood Mr. Freedman.

The Court: Mr. Freedman asked the question. I understand—

Mr. Freedman: I just wanted to know whether it was on the same day.

The Court: Same particular day.

Mr. Freedman: Same day, September 13.

[fol. 129] The Witness: That's right.

The Court: I was just confused.

Mr. Freedman: I wasn't interrogating; I simply wanted to make clear that his testimony was directed to that date.

Mr. Scanlan: I think the record should show, however, that Mr. Freedman did propound the question to the witness.

The Court: Well, the record shows what it shows.

Mr. Freedman: It will show what it shows.

You can make the most of it, Mr. Scanlan.

By Mr. Scanlan:

Q. Now, Mr. Corry—

Mr. Freedman: And I will, too.

By Mr. Scanlan:

Q. —while you were there in addition to the statements that Mr. Askew made to you when you called him and he said he had made the announcement on the public address system, did he say anything to you with respect to the Arbitrator's award?

A. He said—he further stated—

Mr. Freedman: The same objection as before, Your Honor.

The Court: Overruled.

A. He further stated that the setback only applied to non-arrival of a ship and he wanted to re-arbitrate.

[fol. 130] The Court: Wait a minute, I didn't hear that. "He further stated"—

The Witness: He further stated that the setback applied only to the non-arrival of a ship and further that he wanted to re-arbitrate, and I wasn't going to discuss any re-arbitration with him or anything. I just wanted to confirm the fact that he made this statement, that he confirmed to me that he did, where he advised the men not to report at 1:00 o'clock in the afternoon but gave instructions to report at 8:00 A.M. on Tuesday morning.

Mr. Scanlan: Cross-examine.

Mr. Freedman: I take the same position, Your Honor; I have no questions.

The Court: No questions. You may step down. That's all, Mr. Corry.

Anything else, Mr. Scanlan?

Mr. Scanlan: No, sir, I don't have any further testimony, Your Honor.

The Court: Mr. Corry—

The Witness: Yes, sir.

The Court: Did you state—you don't have to come up; just stay where you are—when the conversation, the second conversation, took place with Mr. Askew?

[fol. 131] The Witness: No, this was all during the first conversation, sir.

The Court: One conversation?

The Witness: I only had one conversation with Mr. Askew.

The Court: You had one conversation in the morning?

The Witness: Yes, sir.

The Court: All right.

Anything else, gentlemen?

Is that all your testimony?

Mr. Scanlan: Yes, sir, that completes our testimony, Your Honor.

The Court: Mr. Freedman?

Mr. Freedman: I don't intend to offer anything, Your Honor. I don't think there is anything before the Court, sir.

The Court: What does the petitioner ask?

Mr. Scanlan: Your Honor, we ask that you enter an order requiring the defendant Local to comply with the Arbitrator's award.

The award is now a matter of record and it clearly—when Your Honor has an opportunity to examine, you will see that it clearly—provides that the employer here has a right to set back the gangs without qualification and the men must report for work at 1:00 o'clock, and when they do, they are paid four hours in the afternoon and one hour in the morning.

Now, this is an extremely important matter to the welfare of the entire waterfront, Your Honor, because the Union has taken the position, and there was testimony on this at the prior hearing, that Mr. Askew said he did not intend to [fol. 132] be bound by the Arbitrator's award, and I would like to call to Your Honor's attention that the plaintiff organization here is being subjected to harassment in that at the time of the hearing when we were before Your Honor, we did not proceed any further on the ground that the ship was at work and there were statements made of record that the union—by counsel for the union—that the union was bound by the Arbitrator's award in this case and that—

The Court: That is my recollection.

Mr. Scanlan: Yes, Your Honor, and as far as that is concerned—

The Court: What page is it?

Mr. Scanlan: Yes, sir, I would like to refer to the pages.

On page 5, if I might cite that to Your Honor, Mr. Weiner, who represented the defendant Local said:

"We, that is, the union, makes no bones about the fact that they are unhappy with the Arbitrator's award, but we realize that we are stuck with it."

I would also like to cite to Your Honor the statement that is made on page 9 of the notes of testimony by Mr. Weiner when he stated:

"* * * And the arbitrator decided contrary to the union's position that this setback—"

The Court: Where do you find that?

Mr. Scanlan: At the bottom of the page on page 9, Your Honor:

"* * * And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. [fol. 133] It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

In addition, on page 13, Mr. Weiner stated:

"And we have never taken the position. We have taken the position that although we don't like this award, we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter."

In addition, on page 19, Mr. Weiner stated, towards the bottom of the page, Your Honor:

"Before Your Honor indicated maybe I was giving double-talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this Arbitrator's award, even though we don't like it, but we want both sides to live up to the contract. It is not a question only of the union living up to it: Both sides should live up to it. We are willing to live up to it. The men are back at work."

In addition, on page 42, at the bottom of the page, Mr. Adler stated:

"We are bound by the Arbitrator's award, to the award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself. To the extent that it speaks for itself we are so bound."

[fol. 134] In addition, on page 43, Mr. Adler also stated towards the middle of the page:

"We are bound, Mr. Weiner made that clear."

Referring to the Arbitrator's award, and I might point out to Your Honor that at the bottom of the page, where the reference is to the language of 10(6), that that is the language that is involved in this matter before you, this setback clause which is 10(6), and at the bottom of the page on 43, Mr. Adler says—well, I think I would have to read what Your Honor said:

"The only thing that is clear to me that you said—Mr. Weiner said, you are bound by this arbitration award. Now, then—"

And then Mr. Adler says:

"For whatever that award speaks."

Now, Your Honor, these are statements that were made at the last hearing which clearly indicate counsel for the defendant union stated to the Court that the union was bound by the Arbitrator's award as far as that award was concerned, and now we find that Mr. Askew is taking the position that the union is not bound by the award and is instructing men not to report in accordance with the award, and this matter, Your Honor, cannot continue. We cannot be under the harassment of waiting each day to find out if Mr. Askew is going to make a similar announcement, and we will not know whether the men will report or whether they will not report.

[fol. 135] The Arbitrator's award, it was agreed at the time of the arbitration—and this is a matter of record

at the former hearing where the notes of testimony were introduced, which I believe are Plaintiff's Exhibit No. 1—that the Arbitrator's award would be final and binding, and this award must be final and binding as far as the award is concerned, and if the defendant union is going to take the position which it has according to our testimony, which I might say, Your Honor, is not contradicted because there is no contradictory testimony that has been offered in this case, therefore, the position at this point is that the union has taken that position that it will not be bound by the award, and I say to Your Honor that we would request Your Honor very promptly to enter an order enforcing the award in accordance with its terms.

The Court: Mr. Freedman.

Mr. Freedman: Yes, sir.

I may say, Your Honor, that Mr. Scanlan did in the course of his quotations from the testimony omit something very serious and very relevant which qualified what he was saying. I want to say first, however—I will point that out—but I want to say first, however, whatever statements these gentlemen made, who are my partners, they made pursuant to an opinion which I had myself rendered and on the basis of which even Mr. Askew took the position. He didn't take it on his own; he took it after legal advice, and I rendered an opinion, and I am ready to stand behind it, and if there is any culpability, I will take it, and that is that the award of that Arbitrator applied only to that particular set of facts and no other, and I [fol. 136] gave it in my opinion, my carefully considered opinion, that the award of the Arbitrator could not possibly apply to any other set of facts, and that the union was not bound in any other case other than in this particular one by the award of the Arbitrator.

I even pointed out in many instances in a letter which I wrote to the Arbitrator taking exception to his award, a copy of which went to Mr. Scanlan, that this particular

award has many defects, and if it ever comes up for judicial analysis, I think that we could very clearly demonstrate its invalidity.

However, we don't have to go that far in this case or in the preceding one. It is very clear, Your Honor, that pursuant to that opinion of mine that I put in a letter as I said long before the proceedings arose, that I said that the award—and this is a fact, Your Honor, and I can substantiate it with documentary evidence and practice before these parties—that award of the Arbitrator applies only to a specific case and to no other, and whenever a new dispute arises, it has got to go through the regular contract requirements just as every other dispute goes through which requires grievance and which requires arbitration, and that was what Mr. Weiner was talking about when he said they have got to abide by the contract, and by that he meant they have got to go through grievance and arbitration just as they went through the same procedure in the previous case before Mr. Weiss.

Now, what he forgot, he quoted a part of Mr. Adler's testimony on page 43, for example, and this will support what I am saying, and I think that Mr. Adler was simply [fol. 137] following my recommendation, my advice to the union, which I had given to them. On page 43 where Mr. Adler says—and I will read the full paragraph to Your Honor, not as Mr. Scanlan did—and he said:

"We are bound, Mr. Weiner,"—

The Court: Just a moment. I have the wrong page.

Mr. Freedman: 43, sir.

The Court: The bottom of the page?

Mr. Freedman: About two-thirds of the way down where—

The Court: I have it.

Mr. Freedman: Where Mr. Adler says:

"We are bound, Mr. Weiner made that clear. This Court as Mr. Weiner made clear is I think eminently without

jurisdiction because it is clear now that they are trying to enforce an arbitration award that doesn't even apply to this case"—

And then, here is the point that he left out—

"that doesn't even apply to this case and they are seeking equitable relief."

It doesn't apply to this case, and that's the position which we have taken and the union has taken that position on my advice, as counsel for the union, sir. I have advised them.

Now, I may say to Your Honor that going back through the record—and I am prepared to submit those if the time requires at a proper hearing, and if Your Honor should demand it, regardless of whether it is a regular hearing [fol. 138] or not—I will be glad to produce them, records showing that in prior cases, where a decision was made on a particular issue—for example, let me give you a specific issue—Clause 13(d) of the old contract, for example, which required negotiation with the introduction of any new development in the handling of cargo, when the employers introduced certain machinery—one was a sugar machine and then there were several other machines and other equipment which was introduced. The union went before the Arbitrator and said, "Clause 13(d) doesn't apply and we think we are entitled to arbitrate this." We wanted to arbitrate the number of men in gangs. The employers voluntarily reduced the number of men in gangs and we wanted to arbitrate the number of men in gangs that would be required to operate the new machinery.

The employers refused and the union took it to arbitration. Father Comey at that time ruled that under Clause 13(d) of the contract it was subject to negotiation and not arbitration. That was the first time.

Then again the same question came up, precisely the same question. The only thing different was a new machine, and this time the union again went to arbitration,

and Father Comey again, after arbitration, rendered the same decision. They entertained the arbitration and he rendered the same decision.

Four times this occurred, Your Honor—four, perhaps five. Then, following that, new machinery was introduced down at the sugar house, a whole new set of automation, and they couldn't agree the parties couldn't agree on the number of men in gangs to operate it, whereupon the employers took it to arbitration this time, and this time Father Comey took it and he reversed himself, and he said, "It is only human to err. It is true I previously erred that this [fol. 139] clause of the contract required negotiation and not arbitration. I now rule that it requires arbitration," and he went ahead and he arbitrated it.

All of this points up, Your Honor, the practice and the construction of the agreement. It is the identical clause that we are concerned with here, the identical clause. In every case, wherever there is a dispute, every case has got to stand on its own two feet, and whether it is the same, looks the same as any other case, it has got to go through the regular channels, it has got to go through the contract, and that is what Mr. Weiner was talking about. Let them go through the contract, let them go to arbitration. The Arbitrator is available. He has got to render a decision within 48 hours under the contract itself, so they could have gotten instantaneous relief, much quicker than Your Honor could have given it to them. By the time Your Honor gets the complaint, they prepare the complaint and have a hearing and so on, many days go by as the situation is here. There the contract requires the Arbitrator to give his decision within 48 hours. Now, they could have gotten it within 48 hours, and that's what Mr. Weiner was talking about. That's what Mr. Adler was talking about and he made it unequivocally clear when he said that decision didn't even apply to this case, meaning the case that came before Your Honor before, concerning which they did file a complaint.

Now we have got a brand new case with new ships involved, new parties involved, and I respectfully submit to Your Honor that first of all they have not exhausted the requirements under the contract.

Secondly, what they are really asking, Mr. Scanlan is treading on egg shells here, what he is really asking is for injunctive relief. What does he want Your Honor to [fol. 140] do? He wouldn't come out and say it, but the inference is clear. He wants Your Honor to restrain the union from a work stoppage. Am I wrong about that? That's what he wants Your Honor to do.

So that even if they did go through the contract, even if they did abide by all the provisions, and even if the Arbitrator should—and I don't think he will, but that's something to be determined—that even if he should hold the same decision that the other arbitrator held, Your Honor would then be powerless to give him this relief because the Supreme Court of the United States said that the Norris-LaGuardia Act prevents the enforcement of any award which has the effect of enjoining strikes, work stoppages or picketing of that sort, anything which is within the proscription of the Norris-LaGuardia Act.

The Court: Anything else to say, Mr. Scanlan?

Mr. Scanlan: Yes, sir.

Your Honor, first of all, with respect to Mr. Freedman's statement regarding the Arbitrator's award, I would like to point out to Your Honor that when you get an opportunity to review that award, you will see that the purpose of the award was the interpretation of that contract clause.

The Court: I am familiar with it.

Mr. Scanlan: Yes, and therefore it doesn't make any difference what the facts are. The point that was resolved by the Arbitrator was the interpretation of the contract clause that was in issue, and that interpretation would apply at any subsequent time where the same facts are involved, so that if you had the same facts, there is no [fol. 141] necessity to go back and arbitrate because if

that were so, it would make a mockery out of arbitration and there would be no resolution of any industrial disputes.

And also I might point out to Your Honor that if either party were to take the position that once an award has been handed down, which is agreed to be final and binding, that it is not going to be bound by such award because it doesn't like it, that this, too, would make a mockery out of the whole arbitration process. For example, the award that was rendered in this case by Mr. Weiss: I believe that during his term as an arbitrator he rendered six awards, five of which were against the employers, and this was the only award during his term that he rendered in favor of the employer. Now, if the union can take the position that it is not going to be bound by this award because it doesn't like it, then the employers could take the position that they are not going to be bound by previous awards of Mr. Weiss or any of the other arbitrators, and this would certainly create chaos in this industry or in any other industry, for the whole purpose of arbitration is to resolve disputes, and where similar facts are involved subsequently that award applies just like a judgment of a Court.

So I just point that out, Your Honor.

The Court: What are you seeking in this case?

Mr. Scanlan: With respect to the order that we are seeking, I think Mr. Freedman knows what we are seeking, because it is set forth—

The Court: No, I am asking you.

[fol. 142] Mr. Scanlan: Yes. Your Honor, we are asking for an order—

The Court: Do you have a form of order attached here?

Mr. Scanlan: Yes, I have a form of order prepared.

The Court: Let me see it. Show it to Mr. Freedman, or a copy of it, rather.

Anything to say, Mr. Freedman, or have you said all you want to say?

Mr. Freedman: What can I say?

The Court: All right. Anything to say, Mr. Scanlan?

Mr. Scanlan: I beg your pardon?

The Court: Anything to say?

Mr. Scanlan: Before Mr. Freedman says anything, Your Honor, I would like to say one other thing: We are not seeking an injunction. We are not seeking to enjoin work stoppages. It is quite clear what we are seeking is the enforcement of this Arbitrator's award and asking that the defendant be ordered to comply with the said award. That's what we are seeking.

The Court: In the event they do not comply with the said award—

Mr. Scanlan: That is an event we will have to face, Your Honor. If the order is issued by the Court and the defendant elects not to comply with the Court's order then subsequent proceedings will have to be taken.

Mr. Freedman: Just what does that mean, your Honor, enforcement of the award? All that the Arbitrator did there was to hold that—I think it is Clause 10(6) that he refers to—was without so-called qualifications. Now, he didn't order the men back to work.

[fol. 143] Does this mean that the union cannot challenge this award, cannot challenge any dispute hereafter, cannot raise this question in the future? That's what this would mean. In other words, they are asking Your Honor to foreclose the union from even saying in the future that—we can't even raise this in a proper tribunal, that if we do, we will be in contempt of Court.

The Court: Under the Arbitrator's award, you agreed the Arbitrator's award would be final.

Mr. Freedman: In that case?

The Court: In that case.

Mr. Freedman: That case is moot. The ship is gone. There is nothing more to be done about it.

The Court: I will sign this order.

Mr. Freedman: Well, what does it mean, Your Honor?

The Court: That you will have to determine, what it means.

Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

The Court: You handled the case. You know about it. You are arguing it doesn't fit into this case.

Mr. Freedman: I am telling you very frankly now I don't know what this order means, this proposed order. It says, "Enforcement of the award." Now, just what does it mean? Are we being restrained from a work stoppage?

[fol. 144] I don't want to disobey any of Your Honor's instructions. I have never violated any Court order in my life and I will not permit my client to do it and I don't intend to. I must know, therefore, the limit of Your Honor's ruling. Now, I ask Your Honor, what does it mean?

The Court: The Court has acted. This is the order.

Mr. Freedman: Well, won't Your Honor tell me what it means?

The Court: You read the English language and I do.

Mr. Freedman: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

The Court: You know what the arbitration was about. You know the result of the arbitration.

Mr. Freedman: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties when you foreclose them from going to arbitration on this point again.

The Court: I have signed the order. Anything else to come before us?

Mr. Freedman: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client.

[fol. 145] Mr. Scanlan: No, I have nothing further, Your Honor.

The Court: The hearing is closed.

Mr. Freedman: Well, I want to object to it. I want to strenuously object, Your Honor.

The Court: Objection noted for Mr. Freedman.

(Concluded at 2:45 P.M.)

[fol. 146]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pa., Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291, Pier 4, South Wharves, Philadelphia, Pa., Defendant.

ORDER—September 15, 1965

And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award.

By the Court.

Ralph C. Body, J.

[fol. 148]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, Appellant.

Appeal From the United States District Court for the Eastern District of Pennsylvania.

Argued April 14, 1966

Before McLaughlin, Hastie and Freedman, Circuit Judges.

OPINION OF THE COURT—Filed August 11, 1966

By McLAUGHLIN, Circuit Judge.

In this action to enforce an arbitration award under a labor management contract, the trial Court ordered enforcement and the defendant union appeals.

The plaintiff association is a non profit organization comprised of steamship owners, operators, stevedores and the like in the port of Philadelphia. The union is the bargaining agent of the Philadelphia deep sea longshoremen. The bargaining agreement, dated February 11, 1965, applied retroactively from October 1, 1964 and expires Sep-
[fol. 149] tember 30, 1968. On April 26, 1965, there was a dispute between the association and the union over the meaning of Section 10, sub. par. 6 of the agreement. The

[File endorsement omitted]

general caption of Section 10 is "Hiring System". Subparagraph (6) reads:

> "(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

The matter was correctly referred to an arbitrator, Milton M. Weiss, Esq. There were three hearings, April 30, 1965, May 3, 1965 and May 5, 1965. At the start of the first hearing the Arbitrator stated:

> "This hearing that we are conducting today, relating to interpretations of a clause of your new contract, from what I understand, between the parties, it has been agreed that it would be carried on in accordance with the usual procedures of The American Arbitration Association. Being a member of that panel, and having conducted hearings along these lines, I will proceed in the same fashion as we do in those cases."

He then said:

> "I think maybe there are a couple of things I would like to say. I think all of us would like, perhaps, to resolve right in the beginning that it is understood between the parties that the determination made by the Arbitrator in this case will be final and binding."

To this Mr. Freedman, counsel for the Union, answered, "That is our understanding. As a matter of fact, that is the understanding of the agreement." Mr. Scanlan, counsel [fol. 150] for the association, answered: "Yes. In accordance with the contract."

A thorough, well reasoned decision was filed by the Arbitrator June 11, 1965. In that opinion the Arbitrator properly stated the "Issue Involved" as follows:

> "Whether the provisions in the Memorandum of Settlement referred to above, i.e. Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A.M. to 1:00 P.M. is conditioned *solely* upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?"

The Arbitrator ruled:

> "It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed. If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965."

[fol. 151] In making his Award, the Arbitrator held:

"The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs 'ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM, at which time a 4 hour guarantee shall apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period,' may be invoked by the Employer without qualification.

"The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied."

On July 30, 1965 the Union refused to acquiesce in Nacirema Operating Company, one of the Association employers, setting back an 8:00 A.M. start of work to 1:00 P.M.

According to the testimony which was not denied, the President of the Union, Mr. Askew, advised the executive director of the Trade Association, Mr. Corry, that "the arbitrator's award only applied to non-arrival of a ship." Told by Mr. Corry that "The arbitrator's award applies without qualification," Mr. Corry testified that Mr. Askew replied, "'It does not' and they were not going to live by it." Mr. Corry stated that Mr. Askew told him he would have to talk to the business agents. Mr. Corry said he did so, to Messrs. Johnson and Devine, that Mr. Johnson did most of the talking "—and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, 'Yes, that's [fol. 152] right,' and that was the extent of my conversation with them."

On August 2, 1965, the Association filed a complaint against the Union in the District Court. This set out the labor agreement between the parties, the Arbitration Award, "that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award." The complaint went on to allege serious damage to the Employer, the owners and operators of the particular vessel and to the Port of Philadelphia. It stated that "The defendant's refusal to comply with the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between P.M.T.A. and the Union." It prayed for an immediate hearing and "an order enforcing the Arbitrator's Award" with "* * * such other and further relief as may be justified." The District Court issued an order to show cause to defendant, "why it has not complied with the Arbitrator's Award of June 11, 1965" and a hearing was set for August 3, 1965, 11 A.M. A motion was filed on behalf of defendant to dismiss the complaint upon the grounds it did not state a cause of action and that the Court was without jurisdiction to grant the relief sought which the motion called "injunctive".

At the hearing counsel for the plaintiff informed the Court that the action was under Section 301 of the Labor Management Relations Act (29 U.S.C. § 185) for enforcement of the Arbitration Award, above quoted, under the bargaining agreement between the parties which the union had refused to abide by in connection with the employer's attempted set back of work on July 30th and that the union's position was that it "would not abide by the arbitrator's award."

Counsel for the union told the Court "We, that is, the union, makes no bones about the fact that they are unhappy with the arbitrator's award, but we realize that we are stuck with it." He insisted several times more that [fol. 153] the union would live up to the arbitrator's award. After argument on the question of jurisdiction, the Court held it possessed jurisdiction. Contention was made for

the union that the employees had to be notified by 7:30 A.M. of a set back. Actually, all the award mentioned about 7:30 A.M. was, as seen above, to repeat the language of 10(6) of the employment agreement providing that the gangs "ordered for an 8:00 A.M. start Monday through Friday can be set back at 7:30 A.M. on the day of the work * * *." There is nothing regarding notification to employees by 7:30 A.M. In passing, that would be a physical impossibility where the set back itself did not take place until 7:30 A.M. This particular argument was not urged at the later hearing nor is it alluded to on this appeal.

At the August 3rd hearing the Court was advised by counsel for the plaintiff that because of the economic problem of keeping the ship idle, the objected to additional wages demanded had been paid and that the men had returned to work. The Court made the following statement:

> "I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.
>
> "So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued."

The question of the construction of the Arbitrator's Award again came before the Court on September 13, 1965. At that time the Court said to counsel on both sides:

> "It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.
>
> "Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the [fol. 154] last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other

facts have arisen, so, Mr. Scanlan [counsel for plaintiff], we will give you the oar."

On that occasion four employers of the plaintiff had attempted to set back gangs under the Arbitrator's Award and Mr. Askew, President of the Union, ordered the men to follow different procedures. Plaintiff's dilemma, as outlined to the Court, was that an order was needed requiring the Union to comply with the Award "because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work."

For the defense, it was again asserted that the Court had no jurisdiction, with the further argument that the Award only covered the one dispute then active, i.e. "Every dispute is a different case all by itself." At a further hearing on September 15, the subsequent events making the hearing necessary were narrated by witness for the plaintiff, Mr. Corry, the executive secretary of the Association, who testified, of the Union president's order to the men which in effect countermanded the employers' set backs and stopped work on the four ships concerned. Mr. Corry said that in a talk he had had with Mr. Askew, the latter told him that "• • • the set back only applied to the non-arrival of a ship and he wanted to rearbitrate." Mr. Evans, chief dispatcher for the Association, heard Mr. Askew give his countermanding order and so stated.

There was no testimony on behalf of the Union.

The Court's attention was specifically called to the various statements by counsel for the Union at the previous [fol. 155] hearing to the effect that the Union would obey the Arbitrator's Award, particularly to counsel having said to the Court

"* * * And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

It was claimed on behalf of the Union that the Arbitrator's decision governed only the single dispute at that time and did not apply to any other subsequent 10(6) problem. The second point presented was a repetition of the question passed upon by the Court at the first hearing i.e. a denial of jurisdiction on the ground that injunctive relief was being sought.

The Court, holding that the Arbitrator's Award was final and binding in its construction of Section 10(6) of the employment agreement, ordered that the Union specifically enforce it and that it comply with and abide by the said Award.

Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:

"The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-[fol. 156] LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain

> an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

In that decision the Supreme Court, p. 212, approved of its opinion in Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) which held pp. 458-459:

> "The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

In 1960 in the case of Steelworkers v. Enterprise Corp., 363 U.S. 593, the Supreme Court again ruled that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. The Fourth Circuit Court of Appeals, 269 F.2d 327 (1959) had modified the judgment of the District Court as the Supreme Court said p. 599 "* * * so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed." See also Textile Workers Union v. American Thread Co., 113 F.Supp. 137, 141, 142 (D.Mass. 1953), which was completely approved by the Supreme Court in Lincoln Mills, supra. Local 149 Boot and Shoe Workers v. Faith Shoe Co., 201 F.Supp. 234 (M.D. Pa. 1962) where the Court sustained a § 301 action similar to the one at bar to enforce an Arbitrator's Award. New Orleans S.S. Association v. Longshoremen's Local 1418, 44 CCH Labor Cases 26,602 (E.D. La. 1962) dealt with the same problem with the Court holding:

> [fol. 157] "However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plaintiff is entitled to have the award of the arbitrator enforced."

Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us.

Appellant also complains that the trial Court did not make findings of fact and conclusions of law and give reasons for the issuance of the order and to clarify the nature of the conduct compelled, allegedly in violation of F.R.C.P. 52(a) and 65(d).

The argument is without merit. Appellant's citations from this Circuit are founded on particulars radically different from those before us and are not comparable. We have already held that this is not an injunction suit. It is squarely under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. It alleges a breach by defendant of its labor contract with plaintiff in that the former refuses to comply with the Arbitrator's Award under said contract to its damage and asks for an order enforcing the Award; for specific performance of the Award. On August 3, 1965 when the matter had first been heard, because the men were back at work then under circumstances as outlined earlier, the Court said, "I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction and whatever the situation is, we will handle it at that time." In accordance with this, on August 13, 1965 the attorney for the plaintiff reported the new situation to the Court, as above related and the Court thereafter held a hearing at plaintiff's request. This was still under the original [fol. 158] order on defendant to show cause why it had not complied with the Arbitrator's Award. The decision disposed of the rule to show cause by ordering compliance with the Award on the part of defendant. Plaintiff urges that in those circumstances Rule 52(a) does not govern since in reality the decision was on plaintiff's motion under

its rule to show cause. Under 52(a), findings of fact and conclusions of law are unnecessary on decisions on motions with the exception of involuntary dismissal motions under Rule 41(b). Plaintiff here makes an impressive point.

And the circumstance that defendant took its appeal the day after the order was and is important. Whether deliberate or not, it precluded the trial Court from entering findings of fact and conclusions of law even if they were required in this instance.

Above all, in the uncontradictable posture of this appeal the error, if any, of not filing findings of fact and conclusions of law was inconsequential. There was no dispute of fact, and no challenge whatsoever of evidence on behalf of the plaintiff. The sole opposition to plaintiff's proofs was the legal argument that the Court did not possess jurisdiction and that the Arbitration Award did not mean what it said and was not of the scope which had been definitely agreed to on behalf of the Union. Factual issues therefore were not validly before the Court and the record fully discloses the in effect admitted facts on which the order was based. Barron & Holtzoff (Wright Rev.), Vol. 2b § 1126 p. 500. The trial Court, on the legal points before it, merely determined the law from the uncontroverted facts, making the absence of formal findings of fact and conclusions of law excusable. United States v. Prendergast, 241 F.2d 687 (4 Cir. 1956); Rossiter v. Vogel, 148 F.2d 292 (2 Cir. 1945); Hurwitz v. Hurwitz, 136 F.2d 796 (D.C. Cir. 1943).

Rule 65(d) F.R.C.P. deals with "Form and Scope of Injunction or Rertaining Order". In pertinent part it reads:

> [fol. 159] "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; * * *"

The order in question reads:

> "And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award."

As we have indicated this order is not an injunction. Nor can it be reasonably construed as a restraining order. All that it requires is that the defendant affirmatively enforce the Award and comply with and abide by it. It simply calls upon the defendant for specific performance of the Arbitration Award.

Even if it were assumed to be within Rule 65(d), under the facts, the language of the order is fundamentally in accordance with 65(a). Mayflower Industries v. Thor, 182 F.2d 800 (3 Cir. 1950), cert. den. 341 U.S. 903 (1951), relied on by appellant had to do with an injunction issued under Rule 62(c) pending an appeal. Because no grounds were given for its issuance the injunction was dissolved. The case does not touch the special factors of this controversy. In any event if there is error with respect to 65(d), it is minor and in no way decisional.

Appellant's final point is that the action was moot because plaintiff failed to go to arbitration as required by [fol. 160] the contract and because there was no authority to retain jurisdiction. This needs no extended discussion. The August third episode was not ended legally because the employer was forced to pay the extra money demanded under the economic compulsion of being unable to keep its ship idle. The Court continued the case for the time being against the possibility of a like practical condition

arising. The wisdom of so doing developed when an identical type of work disturbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the entire Port of Philadelphia.

The thought advanced that the litigation was moot because plaintiff refused to go to arbitration is out of line with the facts and the law. As has been seen the Arbitration Award was not to cover just a single wrangle under 10(6). The Award construed 10(6) itself and held generally regarding set backs that which it so plainly sets forth as above quoted. This, as was admitted for the Union, ended all attempted legitimate divergence of opinion regarding them. It was no failure to arbitrate on the part of the Association that necessitated the Court action. It was rather the deliberate decision of the Union to disregard the Award in the hope of in some fashion restricting it to the first incident of August 3rd, 1965.

The record in this appeal is free of any substantial error. The order of the trial Judge directing specific performance of the Arbitrator's Award was called for by the facts and law of the problem involved. It will be affirmed.

[fol. 161]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, Appellant.

(D. C. Civil No. 38647)

On Appeal From the United States District Court for the Eastern District of Pennsylvania.

Present: McLaughlin, Hastie and Freedman, Circuit Judges.

JUDGMENT—August 11, 1966

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court (directing specific performance of the Arbitrator's Award) filed September 15, 1965, be, and the same is hereby affirmed, with costs.

August 11, 1966

[File endorsement omitted]

[fol. 162]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Appellant.

Before: Staley, Chief Judge, and McLaughlin, Kalodner, Hastie, Smith, Freedman and Seitz, Circuit Judges.

ORDER—September 22, 1966

The petition for rehearing and consolidation in this case is denied.

By the Court, McLaughlin, Circuit Judge.

[File endorsement omitted]

[fol. 163] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 164]

SUPREME COURT OF THE UNITED STATES

No. 892, October Term, 1966

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Petitioner,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ORDER ALLOWING CERTIORARI—February 13, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.